

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA, ET AL. PLAINTIFFS

VERSUS CIVIL ACTION NO. 3:12-CV-790-HTW-LGI

THE CITY OF JACKSON, MISSISSIPPI, ET AL. DEFENDANTS

STATUS CONFERENCE
BEFORE THE HONORABLE HENRY T. WINGATE,
UNITED STATES DISTRICT COURT JUDGE,
MARCH 18, 2024,
JACKSON, MISSISSIPPI

(APPEARANCES NOTED HEREIN.)

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8 ALSO PRESENT:

9 TED HENIFIN, THIRD-PARTY MANAGER
10 SUSAN RICHARDSON (VIA ZOOM)
11 SUZANNE ARMOR (VIA ZOOM)
12 JIM VINCH (VIA ZOOM)
13 SUZANNE RUBINI (VIA ZOOM)
14 GERALD KUCIA, ESQUIRE (VIA ZOOM)
15 JONATHAN M. BARNES, ESQUIRE
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1 **IN OPEN COURT, MARCH 18, 2024**

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3 THE COURT: Terri, call the case, please.

4 THE COURTROOM DEPUTY: Your Honor, this is United

5 States of America versus City of Jackson, Civil Action

6 Number 3:12-cv-790-HTW-LGI, as well as related case

7 3:22-cv-686-HTW-LGI. We are here this morning for a status

8 conference, and at this time, I'm going to ask the parties

9 to state their names for the record, starting with the

10 plaintiff.

11 THE COURT: All right. Please do so.

12 MR. FINGERHOOD: Good morning, Your Honor. Karl

13 Fingerhood, U.S. Department of Justice, Environmental

14 Enforcement Section.

15 THE COURT: All right. Good morning.

16 MS. PAIGE: Good morning, Your Honor. Mitzi Dease

17 Paige, U.S. Attorney's Office here in Jackson, Civil Division.

18 THE COURT: Okay. Good morning to you.

19 MS. PAIGE: Good morning.

20 MR. FURRH: Good morning, Your Honor. Roy Furrh with

21 the Mississippi Department of Environmental Quality.

22 THE COURT: All right.

23 MS. HODGES: Good morning, Your Honor. Donna Hodges

24 with the Mississippi Department of Environmental Quality.

25 THE COURT: All right.

1 MR. MARTIN: Drew Martin with the City of Jackson.

2 THE COURT: Okay.

3 MR. WILLIAMSON: Terry Williamson, City of Jackson.

4 THE COURT: All right.

5 MR. HENIFIN: Ted Hinifin, interim third-party manager.

6 THE COURT: All right.

7 MS. WILSON: Malissa Wilson, counsel for the interim
8 third-party manager, Ted Hinifin.

9 THE COURT: All right.

10 MR. MCGUFFEY: Mitch McGuffey, also counsel for the
11 interim third-party manager.

12 THE COURT: Okay.

13 MR. TOM: Good afternoon, Your Honor. My name is
14 Joshua Tom. I'm here for --

15 (Courtroom deputy interruption.)

16 Good afternoon, Your Honor. My name is Joshua Tom.
17 I'm here on behalf of the proposed intervenors, Mississippi
18 Poor People's Campaign, and the People's Advocacy Institute.

19 THE COURT: All right. Thank you so much.

20 MR. BARNES: Good morning, Your Honor. This is
21 Jonathan Barnes for Lakeland Seniors. We are not a party,
22 but we are interested -- interested party to the action.

23 THE COURT: All right. Good morning.

24 MR. CALAMITA: Your Honor, Paul Calamita, also for the
25 interim third-party manager.

1 THE COURT: All right. Thank you. Good morning.

2 MR. VINCH: This is Jim Vinch, an attorney with the
3 United States Environmental Protection Agency in Washington,
4 D.C.

5 THE COURT: Okay. Good morning.

6 MR. KUCIA: Gerald Kucia on behalf of the Mississippi
7 Department of Health.

8 THE COURT: All right. Good morning.

9 MS. WILLIAMS: Angela Givens Williams, Your Honor, on
10 behalf of the United States.

11 THE COURT: Okay. Next?

12 MS. MO: And Angela Mo with the U.S. Department of
13 Justice Environmental Enforcement Section on behalf of the
14 United States.

15 THE COURT: All right. Next?

16 MS. ARMOR: Good morning, Your Honor. Suzanne Armor,
17 United States Environmental Protection Agency.

18 THE COURT: All right. Next?

19 MS. RICHARDSON: Good morning, Your Honor. Susan
20 Richardson for Patrick Townsend on behalf of the City of
21 Jackson.

22 THE COURT: All right. Good morning.

23 MS. RICHARDSON: Good morning.

24 MS. RUBINI: Good morning, Your Honor. Suzanne Rubini
25 U.S. EPA Region 4.

1 THE COURT: Okay. Thank you.

2 Next? Did I miss anyone?

3 Okay. Did I miss -- go ahead.

4 MS. EARLY: Hi. Emily Early on behalf of the proposed
5 plaintiff intervenors, Mississippi Poor People's Campaign,
6 and the People's Advocacy Institute.

7 THE COURT: All right. Good morning to you.

8 MS. EARLY: Good morning.

9 THE COURT: Now, did I miss anyone?

10 MS. HERNANDEZ: Yes, Your Honor. Just Mikaila
11 Hernandez for the proposed intervenor plaintiff, People's
12 Advocacy Institute, and Mississippi Poor People's Campaign.

13 THE COURT: Okay. Thank you. Good morning to you.

14 Now, again, did I miss anyone?

15 All right. Does not appear that I have missed anyone.

16 There are a number of matters I want to address. First
17 of all, I want to address a pressing concern of Mr. Henifin
18 relative to the moneys that need to be provided for the
19 vendors who have been given contracts and are awaiting
20 payments for same.

21 So then I'll start with Mr. Henifin. Mr. Henifin,
22 would you go to microphone, make sure that it's on, and give
23 us a comprehensive overview of what's happening here.

24 MR. HENIFIN: Yes, Your Honor. Thank you.

25 So we were in this courtroom on the 27th of February,

1 and I left under the impression that we were going to return
2 to the status quo of grant funding appearing in the account,
3 in the ASAP account, for me to draw down and pay vendors as
4 I needed it.

5 The grant was approved at 115 million. Initial
6 allocation was 44 million based on the first year budget.
7 We've received another 15 in December, and then the day
8 after our status conference, I received 10 million to pay
9 the outstanding invoices I was holding at that time. EPA
10 had been talking about a reimbursement model, but we had not
11 seen anything in writing at that point.

12 So when we left the courtroom, I was under the
13 impression that they would provide any proposed changes to
14 the Court before they instituted those. So then I received
15 the first writing from EPA on this subject on March 8th,
16 Friday afternoon, where they provided the report of their
17 compliance assistance visit, spent the weekend responding to
18 those findings, and sent my response on Wednesday, March
19 13th.

20 On -- surprised on March 15th to get a notice of
21 special conditions from EPA that didn't take into account
22 any of the information we provided as a result of the
23 response to their -- to their report from the compliance
24 assistance visit. So from that, I take it that they just
25 unilaterally put these forward. I received it from the

1 Office of Grants and Debarment about 16 minutes before you
2 received it in the court, and so, again, I didn't see where
3 the process that we had laid out in this courtroom on the
4 27th played out the way I thought it was going to play out,
5 where they would provide that in writing to you, you could
6 consider it, we could ask questions, we could have some
7 discussion before it went into effect.

8 But the letter that I received on the 15th, just last
9 Friday, said it was effective immediately, that we would be
10 in a reimbursement mode. So I have been sending invoices,
11 because when I received the \$10 million on February 28th, at
12 the time when I was in the courtroom, I said we had about 7
13 million outstanding invoices at that point in time. Paid
14 those invoices on the 28th after receiving the \$10 million,
15 and then in the subsequent days, ran the rest of the money
16 down with other eligible invoices that needed to be paid, so
17 effectively was out of money again in the first week of
18 March.

19 Been notifying EPA's Office of Water Grants folks about
20 that and sending them invoices as they've come in, and now
21 we are over \$10 million in outstanding invoices that are now
22 in the possession of EPA's Office of Water, and they are
23 asking questions about those invoices. Again, raising the
24 issue, if they decide to dispute an invoice or not pay an
25 invoice, I've got no reserves to pay that. I have put

1 contractors out in the field, told them they were authorized
2 to do the work. I've got nothing to pay them if I don't
3 have these grant funds in the bank or at least available at
4 that point in time.

5 So this is putting us in a very tough position, and if
6 this continues, I'm going to be forced to the tell the
7 contractors they're operating at their own risk.

8 THE COURT: So now, at present, you have some
9 outstanding invoices, which total to approximately 10
10 million?

11 MR. HENIFIN: Yes, Your Honor.

12 THE COURT: The last time we were here, you mentioned
13 the problem you were having on acquiring moneys to pay the
14 vendors, and at that time, there was an agreement, I
15 thought, that had been reached that you were going to be
16 given enough moneys to pay those vendors.

17 Was that your understanding?

18 MR. HENIFIN: Yes, Your Honor.

19 THE COURT: So instead of getting that money, you are
20 saying that, instead you have now been told that EPA will
21 only pay on a reimbursement system. Is that correct?

22 MR. HENIFIN: Yes, Your Honor.

23 THE COURT: Now, a reimbursement system means that if
24 you award projects to various contractors, that they would
25 be performing those contracts at their own peril. Is that

1 so.

2 MR. HENIFIN: That's how I understand it, yes, Your
3 Honor.

4 THE COURT: Because then if they are awarded the
5 contracts and if then during the award period they perform,
6 they still have to have trust that EPA is going to release
7 the funds to you to release to them?

8 MR. HENIFIN: Yes, Your Honor.

9 THE COURT: And if EPA does not release the funds, then
10 what happens?

11 MR. HENIFIN: I have got no money to pay them, so they
12 would have to sue me, I guess. I'm not really sure.

13 THE COURT: And at present, there are about \$10 million
14 outstanding?

15 MR. HENIFIN: That's correct, Your Honor.

16 THE COURT: And tell us how long that sum of money has
17 been outstanding for these vouchers.

18 MR. HENIFIN: These are only about a week old at this
19 point, Your Honor, since the 8th of March.

20 THE COURT: And I would imagine, Mr. Henifin, that the
21 trust and the confidence of the contractors is vital to this
22 procedure, because you have to pick the appropriate vendor
23 whom you think to be the best and ablest to perform the
24 work. But if they are not certain or confident that they'll
25 be paid, then we will be in danger of some of these best and

1 ablest not accepting the work.

2 MR. HENIFIN: That's a potential, Your Honor, yes. I
3 actually have one of those invoices is older than March 8th,
4 because I overlooked payment on an invoice to one of our
5 consultants that's now -- was originally submitted on
6 January 25th, so we're waiting on that payment as well.

7 THE COURT: So this concern that I just announced, has
8 that been a concern enumerated by any of the vendors or
9 potential vendors?

10 MR. HENIFIN: I have gotten questions lately about,
11 asking if they've done something wrong, because their
12 payments aren't coming the way they used to come. I've been
13 explaining to them that the payment method or the -- or the
14 way the money flows from EPA has changed, they are not doing
15 anything wrong, I'll get them paid as soon as I get the
16 money from EPA.

17 THE COURT: You said they have asked whether they've
18 done something wrong?

19 MR. HENIFIN: They were concerned that I was
20 withholding payment for some other reason.

21 THE COURT: And in the past before EPA took this
22 position, what was the timeframe that they were being paid,
23 the interval?

24 MR. HENIFIN: We would typically pay within a week of
25 receiving an invoice, often within days.

1 THE COURT: Okay. And we are beyond that now?

2 MR. HENIFIN: Yes, Your Honor.

3 THE COURT: Well, have you gotten any letters of
4 complaints by any vendors at this point?

5 MR. HENIFIN: No letters, Your Honor. Just a couple of
6 phone calls.

7 THE COURT: And did you explain to them why the
8 payments on these invoices, these payments have not been
9 made?

10 MR. HENIFIN: Yes. I told them that the EPA process
11 had changed, and I was waiting on getting additional funds.

12 THE COURT: And did any of these vendors issue any
13 threats of discontinuation?

14 MR. HENIFIN: No, they did not.

15 THE COURT: And where are these vendors with regard to
16 their completion of their particular projects?

17 MR. HENIFIN: On the case of one of the biggest ones,
18 Jacobs, there's isn't a -- has a completion date. They are
19 running the plants, so we depend on them totally to provide
20 the safe-treated drinking water that goes into the system.
21 So the longer we delay payment on them, the more they may be
22 scratching their head about entering a long-term contract.

23 Our current method at the current time, we are in a
24 reimbursable contract with them, hoping to enter a 10-year
25 contract with them when we resolve a few issues we've got

1 outstanding on some liability language. But once that's
2 done, we would like to enter a 10-year deal with them.
3 Obviously, this might put some shade on that.

4 THE COURT: When did you find out that EPA was not on
5 the same thought processes that you were on with regard to
6 the timely payment of those vouchers?

7 MR. HENIFIN: Really it just -- it started after
8 Christmas. The first of the year, they started saying that
9 because of the compliance assistance visit and their
10 findings, that they weren't going to fund the grant the way
11 they had in the past. So they didn't provide anything in
12 writing, but what they didn't do is provide any money in the
13 account. So it's, essentially, we have been waiting on the
14 official letter or report from EPA since the beginning of
15 the year when they stopped putting money into the grant
16 account.

17 THE COURT: Did they tell you why they found it
18 necessary to change the procedure?

19 MR. HENIFIN: They had a few issues in that they had
20 expressed in -- verbally to me, and then in writing when we
21 did get the report this past Friday, or the 8th, rather, two
22 weeks ago, a week ago Friday, that we couldn't reconcile
23 specific drawdowns with specific invoices. That was because
24 at the time, we didn't realize that was needed. We can
25 reconcile every dollar we've spent to eligible grants

1 expenses, but they were under the impression that I needed
2 to be able to prove every time I drew money down and say
3 exactly what that was -- what invoice that went to pay for,
4 which we didn't understand that as a requirement of the
5 grant when we took the money.

6 Once they pointed that out in November, we changed our
7 process to do that. So now every time we drawn money down,
8 we get a receipt, PDF file from the system that the EPA
9 uses. We annotate that with the specific invoices that that
10 drawdown went for, and the money moves almost immediately
11 from EPA to our bank account to our vendors, in very short
12 order.

13 THE COURT: Apparently you didn't recognize that EPA
14 was reserving, to itself, the right to refuse to pay?

15 MR. HENIFIN: Correct.

16 THE COURT: And that's EPA is now saying. Is that
17 correct?

18 MR. HENIFIN: Essentially.

19 THE COURT: And did the EPA give you a reason why they
20 wanted to change the -- the protocol for payment?

21 MR. HENIFIN: Again, it's because they said I wasn't
22 following their normal grant procedures, they couldn't -- I
23 couldn't, at the time, tie specific invoices to specific
24 draws.

25 So after receiving the written report on Friday the

1 8th, I spent the next five days going back and doing the
2 forensic accounting to tie those back together and provided
3 that information to them on the 13th. So we have now gone
4 back and tied every draw to eligible grant expenses and
5 provided all of that data to EPA.

6 THE COURT: So where is EPA now after you have done
7 that?

8 MR. HENIFIN: They didn't respond to that, instead they
9 sent their letters putting the special conditions on us for
10 not doing that.

11 THE COURT: Okay. With whom have you been dealing?

12 MR. HENIFIN: So largely, I deal with the Office of
13 Water. I think part of the challenge here is the Office of
14 Water is who -- from EPA, is who negotiated this stipulated
15 order, who has been at the table the whole time and been a
16 good partner. And they are -- also have a grant management
17 group in the Office of Water, and I have been dealing with
18 them directly.

19 On top of that, now, you have got the Office of Grants
20 and Debarment, and that group seems to operate totally
21 independent of the Office of Water, and there is no
22 connection. We're not sure where they come together, if
23 they ever come together. So they seem to be operating very
24 independently from the Office of Water, under the umbrella
25 of EPA.

1 THE COURT: And who is present here today?

2 MR. HENIFIN: From either of those?

3 THE COURT: That's right.

4 MR. HENIFIN: I don't believe we have -- we've got some
5 lawyers online, I think, from the Office of Water that are
6 in -- on the Zoom call, nobody from the Office of Grants and
7 Debarment that I recognize.

8 THE COURT: Have you ever talked to somebody directly
9 from that office?

10 MR. HENIFIN: I have met with them when they came to
11 town doing their compliance assistance visit in November,
12 and I have had a -- at least one virtual meeting with some
13 of their folks, and I have had a couple of phone calls.

14 THE COURT: So then who makes the decision, the final
15 decisions, on these matters?

16 MR. HENIFIN: I would assume the matter that we have in
17 front of us is the Office of Grants and Debarment, would
18 make the final decision.

19 THE COURT: Not Water?

20 MR. HENIFIN: Not the Office of Water, I don't believe,
21 but I'm not privy, really, to the inner workings of EPA.

22 THE COURT: But water is the one who comes here?

23 MR. HENIFIN: Yes, Your Honor.

24 THE COURT: To talk about what the decisions are on
25 these matters?

1 MR. HENIFIN: Yes, Your Honor.

2 THE COURT: And from whom do you get your
3 correspondence in writing?

4 MR. HENIFIN: Most of the time, it has been Office of
5 Water until this past -- you know, a week ago Friday was the
6 first time I have gotten correspondence directly from the
7 Office of Grants and Debarment, for the exception of when
8 they set up the compliance assistance visit, I got some
9 correspondence from them back in November.

10 THE COURT: What was your understanding -- when we
11 started this process and you were dealing with EPA, what was
12 your understanding as to which branch you were going to be
13 dealing with?

14 MR. HENIFIN: I don't really think in terms of
15 branches. I think in terms of United States Environmental
16 Protection Agency, how those people have introduced
17 themselves on these calls. And I would think that, at some
18 point, whoever dealt with the -- the negotiation of this
19 order -- these orders, actually, two of them, that that
20 would be the people we would be dealing with, and they would
21 work their inner EPA issues out amongst themselves.

22 THE COURT: From the way you are describing this, is
23 that there are two wings of EPA, at least, and from the way
24 you describe it, I'm not sure they talk to each other.

25 MR. HENIFIN: It doesn't appear to. Thankfully, we are

1 not dealing with soil or trash or air. We would have a
2 whole bunch of different wings of EPA floating around.

3 THE COURT: But these two wings that we are talking
4 about now, do you have any confidence that they talk to each
5 other?

6 MR. HENIFIN: I think there's some communication, but I
7 don't know, you know, at what level and it's, you know,
8 whose got the controlling decision-making power.

9 THE COURT: Do you know whether they have the same
10 lawyers, or they have different attorneys?

11 MR. HENIFIN: They are all represented by the
12 Department of Justice, Your Honor.

13 THE COURT: Well, but the ones that are coming here to
14 report?

15 MR. HENIFIN: I have not seen anyone from the Office of
16 Grants and Debarment.

17 THE COURT: So you don't know whether the ones who are
18 here represents the other wing?

19 MR. HENIFIN: I know they operate with the Office of
20 Water. I have no idea if they operate -- or if they
21 represent the Office of Grants and Debarments.

22 THE COURT: Let's talk about the problem that you're
23 having now on this different approach that is supposed to be
24 followed now, this approval process after the vendors have
25 been let, and after they may have even done the work.

1 Have you talked to EPA here about your situation?

2 MR. HENIFIN: I have talked to the Office of Water
3 about this many times, their grant folks. Again, they have
4 been cooperative and seem to want to help, but I don't know
5 they have got any control over what the Office of Grants and
6 Debarment is doing.

7 THE COURT: In other words, you don't know whether they
8 have the power?

9 MR. HENIFIN: Correct.

10 THE COURT: Did you ask them did they have the power?

11 MR. HENIFIN: We asked for a decision-maker at one
12 point, said who -- where does this come together, and who
13 makes the decisions? But we have never received a single
14 point of contact that can combine those two.

15 THE COURT: I seem to recall that this question on the
16 decision-making -- maker was proposed to EPA some time ago?

17 MR. HENIFIN: Yes, Your Honor.

18 THE COURT: In fact, seems like that was as far back as
19 maybe during the Christmas?

20 MR. HENIFIN: Probably right after the holidays, yes,
21 Your Honor.

22 THE COURT: When -- because I remember I asked that
23 question, and so you are saying you did not get an answer
24 since that time as to who makes the decision?

25 MR. HENIFIN: No, Your Honor.

1 THE COURT: I guess that also means that you didn't get
2 an answer as to who has the power to deny the request?

3 MR. HENIFIN: Correct.

4 THE COURT: Let's talk about the appeal process.
5 There's an appeal process for their latest decision. Is
6 that correct?

7 MR. HENIFIN: Yes, there is. So we followed that and
8 filed that appeal this morning. But there doesn't seem to
9 be a timeframe at which they have to make a decision on the
10 appeal. There's a clear timeframe for us to appeal within
11 30 days, but there is no timeframe on the response to the
12 appeal.

13 THE COURT: Well, if there is no timeframe for EPA to
14 resolve the matter, does that mean that the vendors would be
15 sitting without money for quite a while?

16 MR. HENIFIN: Potentially, yes, Your Honor.

17 THE COURT: Tell me about the appeal process.

18 MR. HENIFIN: It seemed fairly straightforward. They
19 required that I had to submit the basis of the appeal by
20 email to a Mr. Hughes, and I did that this morning with the
21 basis of appeal. I had really listed five points, that they
22 failed to consider our response to the technical assistance
23 review, which, again, I submitted on the 13th, and they sent
24 this letter on the 15th.

25 I've submitted a corrective action plan, which solves

1 most of the issues. Unsupported -- which I submitted the
2 corrective action plan with this appeal. Unsupported
3 drawdowns, again, that was covered by the March 13th
4 response.

5 I talked about the grants are supporting the emergency
6 restoration of water and sewer, and that the -- you know,
7 JXN Water is a new entity that was formed for this purpose
8 by the stipulated order and has no financial reserves, can't
9 pay invoices prior to drawing them down, as would typically
10 happen in a reimbursement model. You know, we are not
11 dealing with a city with any kind of reserves. We are
12 dealing with a private entity that has no reserves.

13 I asked for specific relief, which was the other piece
14 of a appeal that was supposed to be in there. It's very
15 simple. Immediate review and approval of the corrective
16 action plan, immediate withdrawal of the special conditions
17 upon approval without waiting for the corrective action plan
18 to be fully implemented, and that the balance of the 115
19 million approved grant be made available in the ASAP System
20 by 22 March with the approval --

21 THE COURT: Could you slow down some?

22 MR. HENIFIN: I'm sorry.

23 THE COURT: Okay.

24 MR. HENIFIN: Got rolling.

25 So the last one would be that the balance of

1 \$115 million approved grant be made available in the ASAP
2 System by March 22nd, and the approval of the \$30 million
3 amendment that has been pending be approved by April 1st.

4 So those were the relief sought and the basis of
5 appeal, and that was submitted this morning.

6 THE COURT: And you have no idea how long EPA might
7 take on resolving that matter?

8 MR. HENIFIN: No, Your Honor.

9 MS. WILSON: The Court's indulgence, Your Honor?

10 MR. HENIFIN: My lawyer is telling me they have
11 180 days to respond, Your Honor.

12 THE COURT: Who has 180 days?

13 MR. HENIFIN: EPA, to respond to the appeal.

14 THE COURT: So they have six months to respond?

15 MR. HENIFIN: Yes, Your Honor.

16 THE COURT: If they have that length of time to
17 respond, six months, what -- what adversities might we
18 suffer during that time period?

19 MR. HENIFIN: I think we could have some stopped work
20 if this is continued to languish. We could continue
21 local-funded work, and we might have to stop the
22 grant-funded work until we can get this resolved, which,
23 essentially, is all the Drinking Water work, and I'm not
24 really sure how we deal with Jacobs who is under contract to
25 operate the plants.

1 THE COURT: So that 180 days begins to run when?

2 MR. HENIFIN: When I submit the appeal, which was
3 today, this morning.

4 THE COURT: Okay.

5 MR. HENIFIN: I'm appealing their decision they gave us
6 Friday. I took three days to -- over the weekend, to submit
7 my appeal. They are going to take 180 days to decide
8 whether or not to grant that. This is not Atypical of EPA,
9 Your Honor.

10 THE COURT: What do you mean by that?

11 MR. HENIFIN: They typically put very short time frames
12 on folks. Like, I had a 30-day window to make this appeal,
13 and if I didn't appeal it in 30 days, it was a final
14 decision. That's normal EPA language, but yet, there is no
15 clock ticking on them, or it's a very slow clock or a
16 calendar ticking to get to their decision point.

17 THE COURT: And if they take six months to make a
18 decision, that would be most adverse to the progress that
19 we've been making?

20 MR. HENIFIN: This is such an unusual situation, Your
21 Honor. We are in an emergency trying to -- the funds we're
22 talking about, are under a special section of the Safe
23 Drinking Water Act for emergency measures. We are trying to
24 spend these down quickly to solve the problems here in
25 Jackson. We have made incredible progress on the water

1 system. Largely, because we have had this money available,
2 and we've been able to hire contractors and move quickly to
3 make that happen.

4 As that arose, I guess they forgot that this was an
5 emergency less than a year ago -- or a little over a year
6 ago, and we were desperate for solving this problem. But
7 now that we've got it going, well, business is usual, I
8 guess. We'll revert back to slow federal government motion.

9 That is not what we are here for. That's not what that
10 1442(B) Section of the Safe Drinking Water Act was all
11 about. It's about emergency measures. We need to be
12 moving. We can't wait six months for decisions. We can
13 barely wait six days for decisions.

14 THE COURT: You said something at one point that if we
15 couldn't get that money timely, you might have to shut down
16 all efforts that are now being waged?

17 MR. HENIFIN: On the -- with the -- that are being paid
18 for with federal funding, yes, Your Honor.

19 THE COURT: That are federal-funded projects. And
20 might have to resort to moneys that we could get out of the
21 local rendition of moneys.

22 MR. HENIFIN: Which aren't adequate.

23 THE COURT: That's what I was about to ask. Because
24 that's what my understanding is, it's not adequate.

25 MR. HENIFIN: Correct. You know, we are under a lot of

1 pressure to bring in more local revenue, which we are
2 working very hard on the billing system, disconnects, trying
3 to get people to paying their bills. We were up to, last
4 month, 65 percent of those billed pay their bills.

5 We started the severance process, meaning we have
6 started automatically cutting letters out of our billing
7 system, to tell people they are going to be shut off if they
8 don't pay within 21 days.

9 So all of that is moving forward to try to increase
10 folks payment. We have worked hard at getting meters in the
11 ground, making a lot of progress. But we knew we would
12 never get to the 80 to 90 percent collection rate within the
13 first few months. Our target this year is to try to get to
14 80 percent from our current 65, but that's for the year.
15 That's going to be a challenge. We are already three months
16 into the year, and we're not getting to that point, but we
17 are going to continue to do our best to do that.

18 That increases the amount of local revenue, but we are
19 paying \$1.6 million a year on private debt -- I mean,
20 \$1.6 million a month, which is really hurting us on the cash
21 flow perspective. There is potential that we can retire
22 some of that debt using the other federal funding we have
23 got, which is the state revolving loan fund.

24 But we are challenged to make that work due to some
25 statutory restrictions on the money, can only be used for

1 Drinking Water projects, and, unfortunately, we haven't been
2 able to tease out of the 160 million in private debt that is
3 outstanding, how much was used for Drinking Water projects
4 and how much was used for sewer projects, and EPA wants
5 invoices and proof of payment before they would let us
6 retire any of that debt using the state revolving loan fund
7 money.

8 That's a pretty convoluted conversation I just had, and
9 I'm sorry. I live in this world right now, and it's a bit
10 confusing. But, essentially, we are going broke with \$450
11 million in the bank that could solve some of the problem,
12 but we can't get everybody to play along with trying to
13 figure out how to actually get the debt retired, or at least
14 a portion of it that's eligible to be retired with the
15 \$450 million that Congress provided us through the state
16 revolving loan fund.

17 Different issue all together than the grants. Grants
18 is 150 million, 450 is a state revolving loan fund for
19 infrastructure projects or debt retirement or both, and
20 that's a different issue than the one we were talking about
21 earlier. But it is every bit as troublesome, because our
22 local cash flow is stretched to the extreme, due to the debt
23 we are carrying on this system.

24 THE COURT: Identify the EPA people with whom you've
25 had this conversation.

1 MR. HENIFIN: As far as the local revenue issues, or
2 the grant issues?

3 THE COURT: The grant issue.

4 MR. HENIFIN: The grant issues have been with Deborah
5 and Treita (phonetically) from the Office of Water and
6 Grants. And I'm sorry I don't have their last names in
7 front of me. It's somewhere here.

8 And then I have gone on the record in both the --
9 copied the whole water distribution -- there is a whole list
10 of lawyers, many of them are on the call, in the Office of
11 Grants and Debarment that received all of this information
12 as we have been sending out the emails.

13 THE COURT: And your attorneys?

14 MR. HENIFIN: And my attorneys, of course.

15 THE COURT: Have they been in contact with some of the
16 attorneys from EPA?

17 MR. HENIFIN: Yes. And from Department of Justice.

18 THE COURT: And have they discussed these issues that
19 now we're discussing?

20 MR. HENIFIN: Looking at Mr. Calamita to see him nod
21 his head yes or no, or --

22 MR. CALAMITA: Your Honor, if I may, we have had some
23 conversation, but I got no advanced notice of the EPA
24 decision to put Mr. Henifin on a reimbursement basis. First
25 I learned of it was Friday, at the same time Mr. Henifin was

1 notified.

2 THE COURT: You did not know about it beforehand?

3 MR. CALAMITA: I did not, Your Honor. And I -- when we
4 left the status conference on February 27th, I thought the
5 understanding was that we would have conversation with --
6 with the agencies about that decision before they made that
7 decision, and those conversations did not occur.

8 THE COURT: All right, Mr. Calamita. Thank you.

9 Is there anything else I need to go over right now?

10 MR. HENIFIN: I don't think so, Your Honor.

11 THE COURT: Okay. Thank you, Mr. Henifin.

12 Well, then, I should turn to EPA now. Who is going to
13 speak for EPA? But before you start speaking, good morning
14 to you, again.

15 Now, but before you start, could you educate me on your
16 hierarchy at EPA as it addresses or concerns the crisis we
17 have here in Jackson? Who the decision-makers are, and what
18 process you go through, and what authority, if any, you have
19 to bind EPA when you are here?

20 MR. FINGERHOOD: Well, I'll address the -- that last
21 question first, Your Honor.

22 THE COURT: Okay.

23 MR. FINGERHOOD: Good morning, Karl Fingerhood.

24 THE COURT: Yes.

25 MR. FINGERHOOD: I represent the Department of Justice

1 in the enforcement action that was brought with respect to
2 the Safe Drinking Water Act and the Clean Water Act. I do
3 not represent EPA with respect to the grants issue. That is
4 an administrative process. That process has begun, and as
5 the ITPM stated, he has begun the process to appeal that.
6 That is not before this Court and will not be ripe until
7 there is a final agency decision once those appeal rights
8 have been exhausted.

9 Just quick side note, I think the 180-day is an outside
10 time limit. I do understand and, again, I'm not an expert
11 in the grant area of law, but I have been advised that once
12 the appeal has been issued, there's a 15-day period where
13 the decision officer is supposed to acknowledge receipt and
14 then advise if there is additional information, et cetera,
15 that will be necessary for the administrative process.

16 So I do not represent the Office of Grants and
17 Debarment. As you know, there was hundreds of millions of
18 dollars that was appropriated for Jackson. Those are
19 federal taxpayer funds and are subject to the laws that --
20 and regulations that apply to federal grants.

21 The Office of -- EPA's Office of Grants and Debarment
22 is the office that's in charge of ensuring that those
23 regulations are complied with. They have reviewed this, and
24 we did share the correspondence with Your Honor, and there
25 has been -- as the ITPM indicated, he did respond, and there

1 is -- the administrative process is beginning now.

2 There is a law as part of that grant process that when
3 someone is placed on a reimbursement basis, the -- the
4 invoices, the properly submitted invoices, are to be paid
5 within 30 days, which, I believe, is consistent with the
6 contracts the ITPM indicated he has with his vendors. I
7 believe that in the instances where concern payments have
8 been processed on, kind of, a reimbursement basis, it is
9 usually taken place around a two week timeframe, which while
10 not as fast as the ITPM was previously paying the vendors,
11 it's within the timeframe that is in the contracts with the
12 vendors and within the 30-day reimbursement timeframe.

13 So there is a process as part of the EPA decision where
14 Mr. Henifin -- I'm sorry, the ITPM in JXN Water, can take
15 certain steps to have the advance payment model reinstated,
16 and he has raised those in his appeal that was filed this
17 morning. And, again, I can't speak for the administrator
18 process, but I would assume that since they are now being
19 submitted, they will be reviewed and decided, and there will
20 be some follow-up conversations.

21 I can say this, that the Office of Grants and Debarment
22 has received the communications regarding the grants issues,
23 both the 3/13 one and this morning, and have advised the
24 appropriate staff in that office that they are reviewing it
25 expeditiously, the Office of Grants and Debarment will be in

1 touch with the ITPM and JXN Water in short order regarding
2 the administrative action.

3 One other point I want to address quickly is, I think
4 there were assertions that somehow under reimbursement
5 model, the entire invoices may not be paid, I don't believe
6 and, again, I'm speaking outside of my area of expertise,
7 but I don't believe that to be the case. I think if there
8 were specific items and invoice that were -- there may need
9 additional support or something, that would be pointed out,
10 and perhaps, that might be the type of thing. But I don't
11 think they would just not be paid, and as I said, the stat--
12 -- the regulations itself provide that reimbursement
13 invoices, when appropriately submitted, are to be paid
14 within 30 days.

15 THE COURT: You've been here since I have been involved
16 in seeking solutions to this emergency matter.

17 What is your prediction as to how a six-month delay on
18 the reimbursement system would impact on the efforts that
19 this Court and Mr. Henifin have been trying to accomplish?

20 MR. FINGERHOOD: Well, first, Your Honor, I don't think
21 it would be -- at most, it would be a six-month delay. That
22 also doesn't consider the indication from the Office of
23 Grants and Debarment that there are certain -- and it is in,
24 I think, Section 3 of the notification that they sent out
25 this past Friday there are steps that JXN Water and the ITPM

1 can take to get the advanced payment model reinstated. One
2 of those was to get a grants manager or someone to assist
3 Mr. Henifin to kind of do the -- make these procedural
4 changes, et cetera, that the Office of Grants and Debarment
5 have been requesting.

6 And also, you know, the third-party manager has a lot
7 of on his plate in addition to all of the engineering, et
8 cetera. It would be, I think, helpful in my own personal
9 opinion and apparently in the opinion of the Office of
10 Grants and Debarment, helpful to have somebody that they can
11 contact with any type of accounting questions and things
12 like that, for example -- for dealing with processing of the
13 grant funding.

14 THE COURT: So who do you recommend?

15 MR. FINGERHOOD: Who would I recommend?

16 THE COURT: Yes. Give me a name.

17 MR. FINGERHOOD: Oh, well, the third-party manager
18 indicated that he plans on retaining someone from HORNE
19 accounting, which is a regional. I think they are a Top 25
20 nationwide accounting company, and I think they have several
21 offices in Mississippi, including one in the Jackson area.
22 I don't know, specifically, who the third-party manager has
23 identified at that office, but, you know, I think they have
24 been working on things related to Jackson and the water
25 issues for some time. Is that correct? Yes.

1 THE COURT: So then who would you recommend? You got a
2 person's name?

3 MR. FINGERHOOD: Oh, I have had -- I personally have
4 had no dealing with HORNE, but it is my understanding they
5 are a well-represented accounting firm, and would have, you
6 know, CPAs and people of those types of qualifications that
7 would be available to work. I don't know who the
8 third-party manager at JXN Water has been working with at
9 that office. I don't know if it's a person they're
10 currently working with, or if they have someone else in that
11 office in mind, but...

12 THE COURT: And who -- and have you ever worked with
13 this company you're now possibly suggesting?

14 MR. FINGERHOOD: Oh, well, first --

15 THE COURT: Or even the procedure?

16 MR. FINGERHOOD: First let me qualify that I -- this
17 was from Mr. Henifin -- or, I'm sorry, the third-party
18 manager's communication to EPA. He recommended this company
19 that he was going to find someone there. So I have no
20 involvement in this recommendation. I just do know of the
21 company, because I think they are somewhat well-known
22 locally, and may have also been involved in some other
23 earlier matters involving either the sewer or water system.

24 THE COURT: Have you ever seen this procedure applied?

25 MR. FINGERHOOD: Actually, I do think it's fairly

1 common. Again, this is not my area of expertise, but I do
2 think that when you have a large federal grant, that the
3 grantee does frequently retain someone.

4 And there are -- just from a Google search, there are a
5 number of entities that specialize in grants management, and
6 so there is -- you know, I think the practice is somewhat
7 established that there is an industry of people who are
8 experienced in, you know, the requirements of federal grants
9 and what is needed, and, you know, the procedural
10 requirements, the best practices, et cetera, to be
11 implemented, and so there is -- there are a number of
12 entities and individuals that provide those services
13 nationwide.

14 THE COURT: Is EPA taking this case seriously?

15 MR. FINGERHOOD: Yes.

16 THE COURT: Well, let me tell you why I ask that
17 question: You filed this -- this matter in a certain year.
18 Do you recall what year you all filed this case?

19 MR. FINGERHOOD: We filed the Drinking Water Case in
20 November of 2022.

21 THE COURT: And you also filed the sewage case,
22 correct? When did you file it?

23 MR. FINGERHOOD: That was originally filed in 2013, and
24 then, as the Court's aware, we negotiated an interim order
25 on that part of the case. I think that was entered

1 September 30th of 2023, right before the new fiscal year, I
2 believe.

3 THE COURT: But then 13 years went by, and EPA did
4 nothing. Is that so?

5 MR. FINGERHOOD: Well, I wouldn't characterize it as
6 that. We were in constant dialogue with the city about
7 issues that had not been addressed under the consent decree.
8 I think there -- also MDEQ is involved in those discussions.
9 There were administrative orders issued, and --

10 THE COURT: It's not on a docket sheet.

11 MR. FINGERHOOD: No. These were -- these were done,
12 again, administratively, so they wouldn't be on the docket
13 sheet, but there was communication. The city, again, had
14 indicated that their precarious financial condition
15 prevented them from being able to afford some of the things
16 that EPA had requested. So there was an ongoing dialogue
17 during that time period.

18 THE COURT: Well, then, who dropped the ball during
19 those 13 years?

20 MR. FINGERHOOD: I guess --

21 THE COURT: I'm just -- I'm just responding based on
22 what the docket sheet shows. The docket sheet is silent.
23 So it doesn't show that anything. All it shows is that the
24 case was filed, and then later on, it shows that I took over
25 after I went and requested the case, because I saw that

1 nothing had been done. But in the interim, there was
2 nothing.

3 So did somebody drop the ball during that time period?

4 MR. FINGERHOOD: Well, as I said, there were ongoing
5 discussions. You know, I think part of those discussions
6 were if the United States and MDEQ were to bring a renewed
7 enforcement action with spending additional limited city
8 funding on litigation and related expenses be in the best
9 interest of the United States and the citizens of Jackson,
10 or would it be better to continue it -- dialogue about
11 trying to get the work done.

12 Unfortunately, you know, those discussions were not as
13 fruitful as were hoped, and I think -- you know, I don't
14 know if I could blame -- lay the blame at one person's feet.
15 I mean, I certainly was part of that, and I was involved in
16 it.

17 THE COURT: Well, I was moved to ask the question,
18 because when I picked up the file and saw that nothing had
19 been done in 13 years, and then when I recognize that the
20 water case and the sewage case had some relationship to each
21 other, and I asked if I could be assigned the sewage case
22 along with the water case, because I already had the water
23 case. And then after I managed to get the sewage case
24 assigned to me too, because of the interaction between the
25 two, and I thought that that would move these whole matters

1 more rapidly.

2 Then I remember some difficulty we had with trying to
3 merge the consent orders, and even when we were trying to
4 merge the consent orders, I remember the difficulty that
5 surfaced, was EPA had some objections that, at first, I
6 didn't quite understand. And EPA then submitted its
7 objections to the merger of the two, and after a process, we
8 finally worked out all of that to get it merged, and then
9 the next time, there was a problem from EPA on how the
10 moneys were going to be paid.

11 So we did this hearing not that long ago, and frankly,
12 I'm on the side of Mr. Henifin who says that he left here
13 with a certain understanding. I -- I guess I made the same
14 mistake, because I left here with the same mistake, too. I
15 thought that we had agreed that some moneys were going to be
16 provided that he could pull down and get the vendors paid,
17 because we were afraid that if the vendors were not timely
18 paid, that they might withdraw their interest in working on
19 these various projects. And so I thought that was a matter
20 that was already discussed and decided, and so then I now
21 find out that EPA has endorsed another approach.

22 And, Counsel, do you recall any discussion that before
23 you adopted another approach that you would inform the Court
24 of the possibility of another approach? Because I don't
25 recall any notification on your conversion from one system

1 to another.

2 So do you agree with that, or is it something that I
3 missed and Mr. Henifin missed and his lawyers missed? Is
4 there something there that we just were confused about?

5 MR. FINGERHOOD: Well, Your Honor, we did provide the
6 -- the March 8th report to the Court, to chambers, which
7 provided -- that was the initial basis of the notice letter.
8 That was issued on the 15th. We provided that to the Court,
9 and then when the notice letter was issued on the 15th, we
10 provided that to the Court as well.

11 THE COURT: That you were going to a reimbursement
12 procedure?

13 MR. FINGERHOOD: Right.

14 THE COURT: So is that where you are now, that you have
15 now decided -- and I'm saying "you," that's EPA. So now EPA
16 now is on a reimbursement system now?

17 MR. FINGERHOOD: That EPA Office of Grants and
18 Development has made that decision. I don't represent them.
19 That's an administrative decision that's been issued. I
20 have no authority to tell them what to do or not to do.
21 That was an administrative decision, and that's not before
22 the Court either at this time.

23 THE COURT: Well, can you tell me the hierarchy -- the
24 hierarchy at EPA relative to decision-making on these
25 matters that concern JXN Water?

1 Can you tell me then the hierarchy, so we know who is
2 making the decisions about moneys and the other matters that
3 are so vital to the continuation of our efforts to solve our
4 problems down here without some third person making the
5 decision, whom we haven't even seen?

6 So can you tell me then, the hierarchy, place.

7 MR. FINGERHOOD: Yes, Your Honor. It's my
8 understanding that, for example, on the Clean Water Act side
9 and Safe Drinking Water Act side, it's EPA's Region 4 in
10 conjunction with EPA headquarter's Office of Water.

11 With respect to --

12 THE COURT: Okay. Now, let me get these down, so I
13 know who I'm talking about.

14 Okay. So you are saying that it's Region 4?

15 MR. FINGERHOOD: EPA Region 4.

16 THE COURT: Now, who is that?

17 MR. FINGERHOOD: That would be some of the folks on the
18 call, Suzanne Rubini and Suzanne Armor and Michael Creswell.
19 And they also have a team of engineers they work with. Jim
20 Vinch is the headquarters attorney with the Office of Water,
21 and, again, those are the individuals with the Safe Drinking
22 Water Act and the Clean Water Act issues. There is also
23 Michelle Wetherington who have -- on the Clean Water Act
24 side of things --

25 (Court reporter interruption.)

1 I'm sorry. Michelle Wetherington is also involved in
2 the Clean Water Act. She is an attorney at EPA Region 4.

3 Now, with respect to the grant funding, there is a part
4 of the Office of Water that I think the third-party manager
5 referred to, and they deal with the initial phase of, you
6 know, invoices and working the system, but ultimately, it's
7 my understanding that EPA's Office of Grants and Debarment
8 has final say over that process, along with EPA's Office of
9 General Counsel. And those -- both of those offices are
10 located, I believe, at EPA headquarters in D.C.

11 THE COURT: How many people are we talking about?

12 MR. FINGERHOOD: Well, with respect to -- I would say
13 there is probably at least a half dozen people I have seen
14 on emails. But as far as, you know, the specific issues and
15 the appeals, there were people named in the correspondence
16 between the Office of Grants and Debarment and the
17 third-party manager.

18 And so those -- I think those -- at least those two
19 people, one was the officer who will be I think -- I forget
20 what the formal title is, but I think he is the final
21 decision-maker of the office of dispute. His name is
22 escaping me.

23 And then also there's -- I believe there was Keva
24 Lloyd, who is someone who was offered as a person that JXN
25 Water could contact with questions about, you know, the

1 process, and how it -- it would work.

2 THE COURT: This change that was made in the protocol
3 on paying the vendors, was that a committee decision, or a
4 one-person decision?

5 MR. FINGERHOOD: I think it was made by the Office of
6 Grants and Debarment by several people.

7 THE COURT: It sounds like a committee. So then is
8 that a committee decision, basically -- well, because here
9 is why I'm asking the question on this: And I don't think I
10 got an answer to the question I asked a few moments ago. I
11 asked whether we were misinformed or misheard last time we
12 were together, that EPA was going to follow the same
13 reimbursement system.

14 Now, did we just make that up or get confused?

15 MR. FINGERHOOD: Well, there was the 10 million
16 reimbursement that was processed. I think, perhaps, while
17 we were in court last time, or shortly after that. It's my
18 understanding that after that was issued, the Office of
19 Grants and Debarment, along with the EPA's Office of General
20 Counsel, made the decision reflected in both -- the
21 decisions reflected in both the March 8th report and the
22 March 15th notice.

23 THE COURT: So how much time went by from the time you
24 were in court last time, and we talked about these matters,
25 and some of us here apparently got the wrong impression of

1 what you actually said, how much time went by before you
2 sought to clarify and it say, no, we are going to employ
3 another system?

4 MR. FINGERHOOD: I think it was approximately two
5 weeks.

6 THE COURT: Two weeks? And during that two-week
7 period, were you submitted or did you have any additional
8 documents before you to change your mind?

9 MR. FINGERHOOD: It was not up to me. And, as I
10 indicated at the last status conference, you know, I think
11 Your Honor referred to my vast pool of knowledge on this
12 issue --

13 THE COURT: I did.

14 MR. FINGERHOOD: -- and I think I referred back
15 somewhat jokingly, but also somewhat seriously, that I was
16 more like a kiddie pool of knowledge. So I do think part of
17 it was misunderstanding on my part, as far as this being an
18 entirely administrative process for which is totally
19 separate and apart from the Department of Justice, and even
20 EPA Region 4 and headquarters who have been working on the
21 Safe Drinking Water Act and Clean Water Act side.

22 THE COURT: Okay. So then just to complete that line
23 of thought, when we had that conversation about leaving
24 things in place, what you are telling me is that you didn't
25 know that your superiors were going to change it?

1 MR. FINGERHOOD: Well, as I said, they're not my
2 superiors. It's a totally different part.

3 THE COURT: Well, you didn't know that there was going
4 to be an alteration by a group of folk who had primary
5 authority?

6 MR. FINGERHOOD: Right. I was -- I was not fully aware
7 of the separateness of the process, and I understand the
8 meaning for -- or the -- I guess the appropriateness of it,
9 being a separate process. But, yeah, I was not fully aware
10 of the separateness of the process. And I knew -- I think I
11 referred -- when I was here before that, I knew there was an
12 administrative process involved, but I did not understand
13 how it was totally separate from any process that I had been
14 involved in and that EPA Region 4 had been involved in on
15 the Clean Water Act and Safe Drinking Water Act side.

16 THE COURT: Are you also saying that that puts you in
17 an awkward position? And let me say something else on that.

18 What I mean by that is this: After we had that
19 conversation here last time, you were aware that Mr. Henifin
20 was going to go forward on hiring contractors, and that if
21 it took two weeks to tell him that the procedure is
22 different, then he would know that when he engaged them.

23 And, further, some of them had already been engaged on
24 other projects. Therefore, they were rightfully under the
25 assumption that they would be paid timely. And so then when

1 he was told that that is not necessarily the case, then do
2 you appreciate the difficulty you placed him in? Or are you
3 saying that he had no difficulty?

4 MR. FINGERHOOD: No. As I understand, as he has
5 expressed, that, you know, he likes to pay the contractors
6 on a much quicker timeframe. I think -- and I think I
7 stated even at the last status conference that, you know --
8 and that's before I knew there was actually a regulation
9 that requires a grantee on a reimbursement basis to, you
10 know, receive the funds within a 30-day period. Although it
11 would perhaps be longer than what had Mr. -- the third-party
12 manager had been doing in practice, it was still consistent
13 with the terms of the contract. In that, again, this is
14 federal money, not city funds, and so the federal
15 government, you know, pays its bills on time, and there's
16 still full faith and credit in the federal government
17 funding.

18 THE COURT: So then you would understand and not
19 quibble with the Court's choice, should I decide to resort
20 to this approach I'm now considering, to write a short
21 opinion or notice to the public, especially to the vendors,
22 that this inability to pay within the timeframe we had been
23 paying is because EPA chose to change its system without
24 notice to us within a two-week period.

25 Would you understand if I did that how that would be a

1 salvation issue for Mr. Henifin's integrity and confidence
2 that he didn't do anything wrong here, but EPA simply
3 changed its mind?

4 MR. FINGERHOOD: Well, I don't know if that -- like I
5 said before, Your Honor, this is meant to be a temporary
6 change, and there is a process for him to be reinstated to
7 the advance payment model. So there is that option, which
8 he has already availed himself of.

9 I also think that, at some point, there was frustration
10 on a point of the third-party manager about this dialogue
11 with the Office of Grants and Debarment. So there was an
12 indication that they wanted some sort of final decision that
13 they could take before Your Honor. This is not that
14 decision. This is an administrative action. There is no
15 proceeding before this Court, and it would not be ripe until
16 the administrative appeals process had been exhausted.

17 THE COURT: And you had said there's an expedited
18 approach that Mr. Henifin can take?

19 MR. FINGERHOOD: Right.

20 THE COURT: What is that expedited process?

21 MR. FINGERHOOD: Well, I said that -- I had read that
22 quote from the Office of Grants and Debarment that
23 indicated, and this is just the latter part, they've advised
24 the appropriate staff of both the March 13th communication
25 and the appeal notification that was filed this morning.

1 They are reviewing it expeditiously and will be in touch
2 with the third-party manager in short order regarding the
3 administrative action.

4 THE COURT: Okay. That's as close as you can get to
5 naming how long it would take, correct?

6 MR. FINGERHOOD: At this time, yes. And, again,
7 because these are not -- I don't represent this part of EPA.

8 THE COURT: I know you've said that, and I understand
9 that.

10 MR. FINGERHOOD: Okay.

11 THE COURT: Right? So there's another part of EPA,
12 just like that 13-year wait when this lawsuit was filed on
13 the sewage side, and nothing was done by EPA.

14 MR. FINGERHOOD: Well, actually, that I -- that was not
15 another part of EPA. That was -- I was part of the initial
16 group that negotiated the consent decree. So, I mean, I do
17 take some responsibility for that, although -- although
18 nothing appeared on the docket, there were ongoing
19 discussions about how to proceed and how to get the city
20 back into compliance. Those aren't reflected in the docket,
21 but I was a part of those, and so I do take some of the
22 blame for that.

23 THE COURT: Well, if there were some things that were
24 done and some documents that were generated, then I would
25 like to see those documents, because I have looked at the

1 docket sheet and there is nothing there for 13 years. But
2 if there was something that was done, then I would like to
3 see it to give you adequate credit for what was done during
4 that 13 years, because right now, it looks to me like
5 nothing done. There's --

6 I mean, the docket sheet was just amazing. I mean, I
7 just see where the case was filed. Then I see where a
8 consent order was put in, and then 13 years went by, and
9 meanwhile the citizens of Jackson suffered that here it is
10 you have a lawsuit filed by EPA, and EPA could say that,
11 look, we have filed a lawsuit, so we're trying to move this
12 thing along, but the citizens of Jackson were suffering
13 during those 13 years.

14 And in addition, the citizens of Jackson didn't know to
15 go and look at a docket sheet and see that there was
16 absolutely nothing done. I mean, that's -- it's just a
17 matter showing that there was a filing, and then after that,
18 a consent order, and after that, nothing, and -- just
19 nothing. And I was amazed over that, and because I was so
20 amazed over that, and working so hard at that time on the
21 water matter and recognizing that the water case and the
22 sewage case had some family relationship between the two,
23 then I went and asked for the sewage case.

24 It was not assigned to me. I went and asked for it,
25 because I felt like the two need to be worked together. And

1 the consent decree needed to be worked together. And so
2 then we all tried to marry these consent decrees and finally
3 got those together, and that took a while. And then after
4 that, this matter of money, you know, surfaced, trying to
5 get that decided, but the people of the City of Jackson have
6 just suffered this entire time.

7 And that's why I started off with the question on
8 whether EPA was really serious about this lawsuit, you know,
9 because it just seems to be some interruptions here and
10 there, and -- but, you know, but I can't say that the
11 interruptions are not fitting and appropriate from your
12 standpoint and from the regulations that you are calling,
13 but I would appreciate knowing all the regulations that you
14 say that you have to operate under and the ways that we can
15 move this matter quickly ahead so that I can give you credit
16 for what you're doing, because I would hate to determine
17 that you all are not serious about this matter, because this
18 is a grave matter for 160,000 folk, at a minimum, and there
19 they are out there just suffering, you know, on all of this
20 stuff here. And -- and not to mention that some of us have
21 had to learn a whole lot more than we ever cared to learn
22 about water and sewage, you know.

23 So -- you know, so I have spent weekends trying to read
24 up on these things and trying to be sure that we can push
25 this as fast as possible. So then I would like to be

1 informed about what was done during this 13 years. If there
2 is something in there that says that EPA during those
3 13 years was actually moving towards a resolution. But I
4 certainly didn't see it, and once I picked this case up, it
5 certainly was not apparent that anything has been done, like
6 I said before.

7 So if there are some regulations that haunt us at
8 present, and I need to know about these regulations, then I
9 would like very much that you submit them to me, you know,
10 because it seems like we came into this case about the same
11 time. That's what I was thinking. But apparently, that's
12 not correct, because you actually came to the case when you
13 filed it.

14 MR. FINGERHOOD: Yes, sir.

15 THE COURT: But that's right. But then when you filed
16 it, when you filed this lawsuit, that is the sewage lawsuit,
17 were you -- well, I guess I don't need to ask that question.
18 I was going to ask you whether you looked down here in
19 Jackson and say I need to file that lawsuit, so I'm going to
20 go down there and file it. But actually you probably were
21 assigned it, you know, but I don't know.

22 But, nevertheless, you seem to have been working
23 diligently on this matter, and so then I would not like to
24 draw a negative conclusion about this matter without knowing
25 all the players and all of the pieces of litigation.

1 So then if you would be so kind to tell me what
2 administrative orders were put in during that 13-year
3 period, because I don't have any of that on my desk. You're
4 saying there were some.

5 MR. FINGERHOOD: Actually, Your Honor, I do remember
6 now with some prompting from one of my colleagues. As I
7 mentioned, we were considering how to --

8 THE COURT: You were considering?

9 MR. FINGERHOOD: I thought I heard someone.

10 THE COURT: You did. But go ahead.

11 MR. FINGERHOOD: We were --

12 THE COURT: They're not ghosts. You did hear
13 something.

14 Terri, what's the story?

15 THE COURTROOM DEPUTY: Someone on Zoom is not muted.

16 THE COURT: Oh, okay. Somebody on Zoom was not muted.
17 And can everybody mute on Zoom?

18 Okay. Go ahead.

19 MR. FINGERHOOD: So we were considering how to best
20 move the case forward. So we did a few years, I think,
21 before the --

22 THE COURT: I'm sorry. Say what now?

23 THE COURTROOM DEPUTY: It's Ms. Rubini. Suzanne Rubini
24 needs to mute.

25 THE COURT: Okay. Tell her.

1 THE COURTROOM DEPUTY: Ms. Rubini, we need you to mute
2 your microphone, please. Thank you.

3 THE COURT: Okay. Now, go ahead.

4 MR. FINGERHOOD: So I think a few years before the
5 drinking water system issue arose, or the emergency arose,
6 the water issues had also been, you know, under the watch of
7 EPA and MSDH. We started filing joint status reports in the
8 Clean Water Act case. We were trying to get the -- a
9 consent decree. We were discussing a modification of the
10 consent decree, and so we did file reports on a regular
11 basis with the Court about those and providing some
12 background as far as what was going on.

13 In the interim, you know, the first one obviously had
14 some -- a lot more detail, but then in the subsequent
15 reports, we were updating the Court. And, again, this was
16 not before Your Honor, but a different judge, on what had
17 occurred since the time of the last status report. So there
18 is -- some of that should be in the docket.

19 THE COURT: Okay. It's not on the docket. But I can
20 look through the files and see if I could find that, and if
21 I can't, I will notify you. But I would like to be up to
22 snuff on everything that happened during that time period.
23 It would probably be very informative for me, so then I'll
24 have an idea what was happening.

25 So let's now address the present. On the crisis that

1 we are having right now on this money, do you get involved
2 in this process at this point at all?

3 MR. FINGERHOOD: The grants process and also the
4 disbursing of the funds pursuant to the grant, no, I have no
5 involvement. I think, as I indicated, there are a couple of
6 people at the Office of Water who I think will still be
7 involved in this on a reimbursement basis, but the
8 administrative appeal and issues related to the
9 correspondence on March 8th and March 15 are all within the
10 Office of Grants and Debarment and EPA Office of General
11 Counsel.

12 THE COURT: Oh, okay. A few moments ago I said that to
13 be sure that the vendors out here don't look with
14 displeasure upon Mr. Henifin because he was acting on what
15 he thought to be the situation of hiring contractors and
16 allow them to go to work and recognizing that they would
17 expect to be paid within a week, and he thought he had the
18 capability of doing that because the money is there, so then
19 should I write a short note as just an explanation? Would
20 that be something that would trouble EPA?

21 MR. FINGERHOOD: Well, I think there may be information
22 in the March 15th letter that describes the process for JXN
23 Water being placed back on the -- the advanced payment
24 model. I think, you know, that's in that letter already,
25 and also there's the provision that indicates that vendors

1 are to be paid within 30 days when a grantee is on the
2 reimbursement model.

3 THE COURT: Well, should I decide to do that, this
4 notice will be neutral and benign, just to say here are the
5 facts, and contractors and the public should understand that
6 Mr. Henifin is working diligently in the manner in which he
7 said he would, hiring contractors in the manner in which he
8 said he would, expecting them to perform their projects with
9 a high degree of competence, as he said he would, and we ran
10 into a situation here where EPA has changed its mode of
11 reimbursement and may have to -- and Mr. Henifin may have to
12 go through an appellate process, which might take some time,
13 but which was not expected because of the conversation that
14 was had earlier, and without casting any other aspersions,
15 let it go with that, just so the public understands where we
16 are.

17 You know, I have, what, two, three? I think I've done
18 about three clarification letters. I just did one last week
19 on this new act that the Mississippi Legislature is
20 contemplating, and I'm going to make sure that the public
21 understood the parameters of that and understood that one
22 could read it as thinking that something else had gone into
23 effect when actually it has not, and so then I just did a
24 short note to the public to let them know that. So I might
25 do the same thing here just to make sure that we are all on

1 the same page.

2 Now, is there anything else you want to tell me about
3 this? Because you've been gracious enough to answer my
4 questions here. You want to talk to your brain trust over
5 there?

6 MR. FINGERHOOD: Yeah, I do want to mention one thing
7 first. With all due respect, I would be a little hesitant
8 about the approach Your Honor is suggesting to the extent it
9 could be construed as some kind of court order, because, as
10 I said, this is -- and then this matter is not before the
11 Court, and so I do have that concern.

12 You know, Mr. Henifin -- I'm sorry, the third-party
13 manager, and JXN Water, they could issue a press release
14 that they're entitled to do that. And, you know, if EPA
15 feels it's necessary to issue their own press release, they
16 could do that. But I would be concerned with something
17 coming from the Court to the extent it could be construed as
18 some sort of court order or finding of something that we
19 contend is not before the Court.

20 THE COURT: Well, to one extent it is. I mean, because
21 Mr. Henifin said at one point that if he can't pay his
22 contractors, that he might suspend operations. Now, as the
23 third-party manager, that would be his call on that. He
24 will have to report to me about that, but, nevertheless, if
25 he can't pay his vendors, then I certainly understand that.

1 And I also understand, at this juncture, that he might
2 not be able to pay them, not for any defect or default on
3 his part, but because of the unfortunate change by EPA on
4 this matter, which happened when he was in the process of
5 hiring contractors. And they had a right to rely upon past
6 conduct, and so they did, I'm sure.

7 So I'm not so sure you're right on that, that that's
8 not a fight that, you know, I'm not in at this point,
9 because I want this thing to be done as fast as possible, as
10 competently as possible, by the contractors who are deemed
11 to be the best that we can get without creating any ire
12 amongst them where they aren't interested in further
13 contracts with the JXN Water, and that was certainly --
14 that's a certain possibility if these people go out and they
15 spend time with their workers and then find out they can't
16 be paid. That was one of the big complaints that when I
17 came in on the water case, contractors said they had against
18 the city, and that was one of the -- one of the notions or
19 factors that I wanted to be sure that was not present at the
20 present time, whether the city was guilty or not.

21 I'm not saying that the city was guilty. I'm just
22 saying that that's something that the contractors said, and
23 they said that in open court here, that they couldn't get
24 paid. Now, I told them -- I believe I said at the time that
25 I'm not getting into that. We're going forward so that we

1 are going forward. But if this matter here surfaces and
2 these people can't be paid, then I can't say that's not a
3 matter that doesn't concern the Court and the Court's order,
4 because the overall scheme that concerns this Court is to
5 try and get these things done, is to try and get the water
6 repaired, sewage repaired, and try to get these things done.

7 And here it is all this effort that has gone into
8 identifying the various defects, the various problems that
9 need to be addressed, the -- the eruptions on the water
10 side, the eruptions on the sewage side, the standing of raw
11 sewage all over the city, the fissures in various pipes and
12 the loss of water that has already -- had already been
13 processed, those are things that are right on my plate.

14 And so if I can't get those things repaired, then it
15 does concern me. And if I can't find appropriate
16 contractors out here because they said they don't want to
17 work on these things anymore because they can't get paid,
18 well, that certainly concerns us.

19 But I'll see what position I take on this. But,
20 nevertheless, I know what my end game is, and I'm trying to
21 make sure we get there as fast as possible.

22 Now, is there anything else you want to say to me? If
23 so, I'll hear it. I'd ask you if you've consulted with
24 Ms. Brain Trust over there.

25 MS. PAIGE: Thank you, Your Honor.

1 THE COURT: Okay. You like that name?

2 MS. PAIGE: I'll take it.

3 MR. FINGERHOOD: So I have a few points I would like to
4 clarify.

5 THE COURT: Okay. Go right ahead.

6 MR. FINGERHOOD: First of all, you know, the
7 reimbursement process has been in place since Friday. I
8 think it's somewhat speculative to suggest that people are
9 not going to get paid. As I said, the statute requires
10 payment within 30 days.

11 None of the changes that have been proposed, and, as I
12 noted, these are intended to be temporary, prevent JXN Water
13 or the third-party manager from using the funds for eligible
14 expenses related to the drinking water system. EPA is
15 committed to the success of the system and stands ready to
16 provide grant funding on receipt of the approval invoices
17 and is committed to working with JXN Water and the ITPM to
18 provide technical assistance and improve JXN Water grant
19 management capabilities.

20 On the Drinking Water side, I believe there were a
21 couple of administrative orders issued by EPA and MSDH
22 before the -- both the freeze issues that happened the year
23 before and then the collapse in August of 2020 -- I'm sorry,
24 2022 -- actually, one was in 2020, and then in 2021, to try
25 and get the city into compliance with the Safe Drinking

1 Water Act.

2 On the -- on the Clean Water Act, as I noted before, we
3 were in discussions and did file status reports, and we
4 worked with the city, their outside attorneys, their outside
5 consultants, EPA engineers, and had meetings in person,
6 virtual meetings, we had monthly calls trying to figure out
7 what we could do to get the consent decree back on track.

8 We started discussing modification to the consent
9 decree, and unfortunately, when things kind of erupted on
10 the Drinking Water Act side, you know, the primary attention
11 was focused on that. But there were discussions that were
12 going on between all of the parties involved trying to get
13 the city back into compliance.

14 The fact that, you know, there was some time gap, I
15 think we -- you know, we -- we would say that that is
16 unfortunate, but there were -- even during those time
17 periods, there was communication between the city and the
18 EPA on a technical level between the engineers indicating
19 what was going on and what could be done to fix it. And in
20 the interim, the city did bring in an outside contractor to
21 start operating the sewage treatment plants, and that was a
22 step in the right direction. They were making some progress
23 on some of the projects under the consent decree, but they
24 were falling behind the timetable that was established under
25 the consent decree.

1 THE COURT: All right. Thank you very much.

2 MR. HENIFIN: Your Honor?

3 THE COURT: Yes, Mr. Henifin, go right ahead.

4 MR. HENIFIN: So, you know, we're all here today.

5 We're here in Jackson because four parties came together and
6 negotiated an interim stipulated order, started with the
7 Drinking Water. In paragraph -- subparagraph 6-T of that
8 agreement the U.S. EPA signed onto, it said,
9 "Notwithstanding subparagraph 6-M, comply with the terms,
10 conditions, and assurances of any current --

11 THE COURT: Not too fast. Go ahead. Notwithstanding?

12 MR. HENIFIN: "Notwithstanding subparagraph 6-M, comply
13 with the terms, conditions, and assurances of any current or
14 future grant or loan that funds the system, or, if
15 compliance is not practicable, comply to the extent
16 practicable."

17 So I would argue that they agreed to that, the four
18 corners of this document, and this grant, we're complying to
19 the extent practicable, and they're changing the rules on us
20 as we move along. I also point out that Mr. Fingerhood
21 mentioned the March 8th letter as having noticed that the
22 reimbursement process was going to start. It did not. It
23 just purely provided the report of the findings from the
24 compliance assistance visit. We knew nothing about the
25 reimbursement process until the 15th, when the letter showed

1 up in my mailbox, e-mail box, and yours as well that day.

2 And finally, and this is a challenging project overall,
3 and this just adds extra burden. And, sure, we're going to
4 hire another grant assistance person through HORNE and waste
5 some more federal dollars, because we've yet to misspend,
6 misappropriate, or been pointed to for misusing any federal
7 dollars. We haven't. We can prove every dollar we've used.

8 The system was working fine. We're not meeting the
9 exact letter of the grant law potentially, but, again, I
10 think that the deal we negotiated -- and we didn't, I'm not
11 party; they named me a third-party manager at that point.
12 They're just piling on additional burdens.

13 So this may not sound like much, but now I'm reviewing
14 an invoice, I forward it to EPA, EPA asks additional
15 questions, I research that, get that back to them, and then
16 I have to pester them week after week asking: When am I
17 going to see money to pay my contractors? That's all in the
18 normal course of business that we're -- you know, our hair
19 is on fire. We are working very, very hard, and it doesn't
20 seem like the four parties, especially the EPA part of this
21 party, is helping.

22 But that's where I am at the moment, Your Honor.

23 THE COURT: All right. Thank you very much.

24 MR. FINGERHOOD: Can I just state something? As I
25 noted in the outset, and it might have gotten lost, you

1 know, the --

2 THE COURT: Speak up. Thank you.

3 MR. FINGERHOOD: There's a lot of federal money
4 involved here. There's a lot of people paying attention to
5 how it's being used, a lot of good is being done with that
6 money. And so that's why, you know, the -- I think, you
7 know, as the third-party manager might view this as kind of
8 a paperwork headache, but I also think it's important for
9 the public to have transparency and know that the funds are
10 being spent appropriately. And there are kind of processes
11 to ensure that, you know, that is the case, and that's why I
12 believe the Office of Grants and Debarment got involved.

13 One quick thing. I think what I said is that the March
14 8th technical assistance report served as the basis for the
15 notice letter, not that it was mentioned in there, but I
16 think that was the -- at least my understanding of reading
17 those documents, is that's what they based the change on.

18 Again, it's meant to be temporary change, but, again,
19 because of the amount of federal funds involved, that is why
20 I understand they believe this is necessary. And, you know,
21 as Mr. Henifin just indicated, this is -- that's why you
22 need to have a grants manager or someone of that type to
23 help assist, because he has a lot of other stuff going on
24 and it would be, we think, helpful to have someone assist
25 and work with the grants people to ensure that things move

1 smoothly on a going-forward basis.

2 THE COURT: One second. I really don't understand
3 those comments, because things were going along quite
4 smoothly before. And then we apparently had some
5 bureaucrats in D.C. who decided to do something else without
6 any real explanation of why they were doing it.

7 So I really don't understand those comments. We have
8 made a lot of progress here. We're just trying to keep the
9 progress going, and we can't keep it going if we can't pay
10 the vendors. It would seem to me that EPA in D.C. would
11 have known this and wouldn't have waited two weeks to tell
12 Mr. Henifin that the rules of the game had changed, and so I
13 don't see where hiring some other person to assist on this
14 matter is something that he needed.

15 The process was going along fine. The people were
16 being paid. We were moving and getting things done. The
17 wrinkle in this whole matter came when EPA changed the
18 rules. So I don't quite understand why he needs to hire
19 somebody else. He was doing fine before that. The process
20 was not complicated. He was searching out people of
21 competence, checking out their credentials, their past
22 history, working with the city and other people and other
23 entities, hiring them and getting the job done.

24 We have made so much progress under that system, and
25 then the way I look at it, EPA then decided that it wanted

1 to change the rules without any real explanation. That's
2 why I asked the question earlier whether EPA took this as a
3 serious matter, because one could look at the history of
4 this thing and say EPA has not done that and that it has
5 been obstructionist. And so I hate to say that. And so I'm
6 going to be looking to see what needs to be done here and
7 whether the Court needs to shore up its efforts by any other
8 written opinions on this matter.

9 But I just don't understand that comment. I really
10 don't, so I don't need to say anything else about it. But
11 this system on advanced payments was working quite fine, and
12 there has been, the way I see it, no complaints that any
13 moneys were spent on contractors who didn't do their job or
14 didn't do it well.

15 I've tried to keep up as much as possible with the
16 amounts being spent on contractors, the payment dates for
17 those contractors, the projects that they have been doing,
18 and I think that the projects have gone quite well. So I
19 was taken aback sometime ago when EPA stopped the money, and
20 we had to have a powwow on it. And I thought everybody had
21 worked towards a common goal when they said, okay, here's
22 what we'll do; we will maintain the protocol we've utilized
23 so far. And then to find out that that's been changed.

24 So I don't quite understand the thrust of the words,
25 and let's just see if we can go ahead and work towards a

1 resolution on this matter. You know, because I would like
2 to think that all of us have the same goals of trying to
3 satisfy the water needs of a city and to reach a conclusion
4 that would allow the citizenry to enjoy their constitutional
5 right to clean water and to move forward like every other
6 city that's well run. So we'll see.

7 All right. Thank you so much.

8 MR. FINGERHOOD: One last thing, Your Honor.

9 THE COURT: Go ahead. Did your brain trust signal you
10 for something else?

11 MR. FINGERHOOD: There are terms and conditions that
12 come with a grant. The -- as I have noted many times, this
13 matter is not before the Court, but we did provide the
14 correspondence to the Court, which indicates the rationale
15 that the Office of Grants and Debarment had with respect to
16 the issues that led to the March 15th decision.

17 They said there is a road map to put the third-party
18 manager back on an advanced payment model, and that's
19 spelled out. Also as an appendix, there is kind of a
20 history of the back and forth between the third-party
21 manager and the grants people about these issues. So there
22 has been a dialogue that's been going on.

23 THE COURT: I'm going to pull everything out, and,
24 again, go back over it one more time. But I just want to
25 work out how best we get back to the advanced payment

1 schedule, because it's just too hard to expect or too dismal
2 to expect that folk want to be on a system where they can't
3 be guaranteed to get paid after they have already expended
4 their efforts.

5 So we'll all get back together on this. And we're
6 going to see what we can get done and what kind of timeframe
7 we're looking at, because we have to try and move forward
8 fast on this. And so I will look at all the regs again, and
9 see if there's anything in there that I have questions
10 about. And if so, then without requiring you to leap onto a
11 plane and come down here, we can do it by telephone and see
12 what we can get done on that. Okay?

13 MR. FINGERHOOD: Thank you, Your Honor.

14 THE COURT: Okay. Thank you very much.

15 Now, I assume that Ms. Brain Trust has communicated all
16 she needs to communicate. Is that so, Ms. Paige?

17 MS. PAIGE: For the most part, yes, Your Honor. If I
18 could just say one thing? And that is the report that
19 Mr. Fingerhood referred to earlier does lay out substantial
20 issues that JXN Water has and has not complied with. And so
21 as a result of the noncompliance, that is why the action was
22 taken by the Office of Grants and Debarment. And so we
23 would ask Your Honor to look back very carefully at those
24 things and that sequence of events that have led to this.

25 And the only other thing I'd say, Your Honor, is that

1 there's been no proven impact. He has not shown that none
2 of his vendors will not be paid. He hasn't given it a
3 chance. He said in the last hearing that there would be two
4 weeks, but the two weeks was the outset for the amount of
5 time that he's had. So he hasn't proven any impact. It's a
6 change in the process, and it's because of things that JXN
7 Water has not implemented. And we're giving him the road
8 map to try to do that. It's not pointing the finger at him.
9 It's just making sure that the taxpayer dollars are spent in
10 the way that they're supposed to be. He signed the -- an
11 agreement that said that he would operate within those
12 confines, and we're just asking him to do that.

13 THE COURT: Well, now, you heard him read off a
14 paragraph from the consent order. Did you hear that?

15 MS. PAIGE: I did.

16 THE COURT: Okay. And it also said that, if practical,
17 unless it was not practical, that EPA would agree to that.
18 So are you saying that it's not practical?

19 MR. FINGERHOOD: Your Honor, if I may, I don't believe
20 in tag team attorneys here. But there also were terms and
21 conditions in the actual grant itself, but "practicable"
22 means -- I think you know it's something that can be done,
23 and I think what the Office of Grants and Debarment have
24 laid out in their letter are things that can be done. If
25 it's impracticable, that would mean something that he could

1 not do. But I think that the belief is that these are
2 things and procedures that he can do, and so that's -- that
3 language is --

4 THE COURT: You know what I thought? What I thought in
5 the spirit in which you were addressing me before that these
6 are things that he's working towards and make sure he gets
7 them. Once he's notified of all these regulations and
8 stuff -- and there are quite a few regulations -- that he's
9 doing that. And just like he's been working hard to try and
10 satisfy all the regulations that come with this grant of
11 money, which is a large sum of money, which also has some
12 impact on the Court, because I have to review it. I have to
13 review the expenditures on these matters, so he is not the
14 only one who is looking at that.

15 And so just as he has his duties to perform to make
16 sure he is trying to do things as expeditiously as possible,
17 so do the other parties to this litigation, which is what I
18 spoke about earlier. And, of course, I don't know how long
19 all counsel at your table have been involved for 13 years,
20 you know, on the -- on this matter, at least on the sewage
21 matter. But then there are a whole lot of questions about
22 that, but as I said before, we need not get into all those
23 matters, because what we're trying to do is go forward. And
24 so we're not trying to put logs on the fire.

25 What we're trying to do is just make sure we go

1 forward, because, if so, there's a whole lot that could be
2 said and a whole lot of -- of irritation that could be
3 mentioned on this matter. So let's not do that. So thank
4 you so much.

5 MR. FINGERHOOD: Thank you.

6 THE COURT: There is a motion for leave to file suit by
7 the Lakeland Seniors. Are these parties here? These are
8 lawyers?

9 MR. MARTIN: Judge, if I could, Drew Martin, for the
10 city. I don't think University Medical Center would have
11 gotten notice that the Court was going to hear that today,
12 and they are one of the parties to that litigation.

13 THE COURT: You say you don't think they got notice?

14 MR. MARTIN: I assume they didn't. I don't think
15 anybody's here for UMC. Is that correct? The Court -- I
16 think the Court -- well, the email I saw was Friday
17 afternoon, and the city is prepared to move forward with
18 that motion if the Court wants to hear it. I just wanted to
19 advise the Court that UMMC probably doesn't have anyone
20 here.

21 THE COURT: Okay.

22 MR. MARTIN: In fact, does not have anyone here.

23 THE COURT: Do I have everybody else here?

24 MR. MARTIN: I believe so. And, Judge, the reason they
25 wouldn't have gotten the notice is because they're not a

1 party to this litigation; that is, the consent decree
2 stipulated order litigation. They would have only seen it
3 on the docket that is the underlying litigation with
4 Lakeland Seniors and the city and UMMC.

5 THE COURT: Okay. Now, who is the respondent in that
6 motion?

7 MR. MARTIN: Well, I think JXN Water is. The city
8 filed a response as well, but certainly JXN Water is
9 probably the primary respondent, I would think.

10 THE COURT: Okay. Let's do this, unless it interferes
11 with your schedules too much. It is now 11:58, and so we
12 can take a lunch break, and take a lunch break until 1:30.
13 Let me see -- 12:00 to 1:30. In the meantime, you can call
14 up the missing party and see if that attorney would be
15 available later at 1:30, both in body and mind, to go
16 forward on the motion. If not, then I'll just simply set it
17 for another day.

18 MR. MCGUFFEY: We can do that, Your Honor.

19 MR. MARTIN: Yes, sir, we can do that.

20 THE COURT: Okay. So then I'll see you all back here
21 at 1:30 then. Okay?

22 MR. MARTIN: Thank you, Judge.

23 THE COURT: All right. That's for everybody else. See
24 you at 1:30.

25 MR. CALAMITA: Your Honor?

1 THE COURT: Yes?

2 MR. CALAMITA: Your Honor, before we close, there's
3 just one thing I have to correct. The last representative
4 from the Department of Justice suggested that Mr. Henifin
5 was in noncompliance with this grant. Your Honor, that is
6 not correct.

7 They raised four issues. The first is that he was not
8 tying his drawdowns to specific invoices. That has not been
9 the case since November. As soon as he was notified, he
10 changed that practice. He's in full compliance.

11 The second issue was that he was holding on, he drew
12 down extra money, which is contrary to the regulations, but,
13 again, that is not a current practice. That practice has
14 stopped. He only draws down against a specific invoice.

15 The third was that he's paying excess payroll, Your
16 Honor. And what that is is supplemental pay that he's
17 paying to some of the key JXN Water people.

18 Your Honor considered specifically and at length, that
19 supplemental pay last July in your status conference, and in
20 your order on that status conference, you approved that
21 supplemental pay, Your Honor. EPA, last Friday in their
22 letter, or two weeks ago, disapproved what Your Honor had
23 proved and said that the grant money can't cover that
24 supplemental pay. Mr. Henifin disagrees vehemently, but he
25 has acquiesced so that that supplemental pay will come from

1 other funds.

2 And the last allegation of noncompliance is that he
3 doesn't have adequate institutional controls over the
4 grants, which we think is absolutely incorrect, Your Honor.
5 We had told the Department of Justice that Mr. Henifin, last
6 year, put a bid out, a six-figure position, Your Honor, in
7 Jackson, Mississippi for somebody to manage these grants and
8 did not get any acceptable people, and the conversation I
9 had with DOJ, Your Honor, was that he would redo that job
10 posting on Indeed to see if he could get somebody.

11 Instead, he's going to use HORNE. But that's the last
12 thing they say that he's in noncompliance for, he didn't
13 have institutional controls. That institutional control
14 requirement is a vague one. It's a narrative requirement.
15 It doesn't say he has to have an outside person.

16 My view was he was doing it perfectly fine. But,
17 again, we have yielded to them, so as we sit here today, I
18 don't think there's a single allegation of noncompliance,
19 and if we had had the opportunity to talk to them, as the
20 Court contemplated in the last status conference, I don't
21 think we would be going down this path.

22 And the last thing I'll say is the harm here, which is
23 today's harm, for Your Honor and Mr. Henifin, is that every
24 contract he signs, he really doesn't know if he can pay it,
25 Your Honor, because some independent party who, by the way,

1 in the same letter disapproved the supplemental pay for the
2 city employees. So it's not like the grants people aren't
3 willing to, you know, put their views on these contracts on
4 things that are most critical to us, like, how we pay our
5 people.

6 When Mr. Henifin signs a contract for somebody to make
7 a repair, he doesn't know that he's going to have money to
8 do that. And none of my other clients are in that position,
9 and, quite frankly, nobody on this -- in the status
10 conference today signs contracts they don't know whether or
11 not they can pay.

12 So I'll would stop there, but I would ask the Court I
13 think this should be expeditiously resolved, because
14 Mr. Henifin, the couple of outstanding allegations are no
15 longer accurate, and the one or two that they raised,
16 Mr. Henifin has conceded on, so I would hope it's not
17 six months. I would hope it's two weeks, and we get back to
18 the proper approach where Mr. Henifin knows he can pay a
19 contract when he signs it.

20 Thank you, Your Honor.

21 THE COURT: Okay. All right then. Now, for the people
22 who are going to be here -- counsel, you want to add
23 something?

24 MR. FINGERHOOD: Just quickly, Your Honor.

25 THE COURT: Okay.

1 MR. FINGERHOOD: All those matters can be raised
2 administratively. And, in fact, I believe Mr. Henifin has
3 already raised those in -- at least many of those in the
4 papers he's already submitted to the EPA Office of Grants
5 and Debarment.

6 THE COURT: Well, that's my understanding, that those
7 things have already been raised. I read all those, and --
8 but like I said before, that I would hate to see the parties
9 devolve into challenges to each other on matters that's
10 supposed to be handled administratively, because if that's
11 the case, then the Court has enough matters that he could
12 bring up concerning EPA. And so -- but that's not why we're
13 here. We're here to try and see if we can reach a
14 resolution on it. Thank you.

15 Yes?

16 MR. TOM: Good afternoon, Your Honor. Joshua Tom, on
17 behalf of the proposed intervenor plaintiff. I just wanted
18 to raise whether Your Honor expected to hear that motion
19 today? We'd be happy to talk about that today or at another
20 time of the Court's choosing.

21 THE COURT: Who are your opposite numbers? Are they
22 here today?

23 MR. TOM: Yes. Everybody's here -- all of the people
24 that should be here are here today.

25 THE COURT: Are you prepared to go forward on that?

1 MR. TOM: If we could do that, yes, sir.

2 THE COURT: I had put it down --

3 MR. TOM: Okay.

4 THE COURT: -- to go forward on it, because then I was
5 going to hear this first one, I told everybody 1:30, now
6 it's going to be 1:45, because we're going to be at 1:45
7 pretty soon. But I had put it down to hear it, so I would
8 like to hear it.

9 MR. TOM: That's great. Thank you, Your Honor.

10 THE COURT: So unless -- unless it's causing some
11 serious problems on schedule-wise for some of the other
12 persons involved with that motion, I'd like to go forward on
13 it.

14 MR. TOM: That's great.

15 THE COURT: Okay.

16 MR. TOM: All right.

17 THE COURT: We'll see what we have. 1:45 then on the
18 first one.

19 (A recess was taken at 12:08 p.m.)

20 THE COURT: All right. I'm ready.

21 MR. BARNES: Good afternoon, Your Honor. Jonathan
22 Barnes for Lakeland Seniors.

23 THE COURT: All right now.

24 MR. BARNES: Good afternoon, Your Honor. Jonathan
25 Barnes for Lakeland Seniors.

1 THE COURT: Okay. Go ahead.

2 MR. BARNES: Your Honor, Lakeland Seniors has filed a
3 motion for leave to sue JXN Water, and that's why I'm here
4 today. What is the lawsuit going to be about? The
5 lawsuit --

6 THE COURT: Is your mic on?

7 MR. BARNES: I believe so.

8 THE COURT: Is the green light on?

9 MR. BARNES: The green light is on, Your Honor.

10 THE COURT: Okay. Talk directly into that mic then.

11 MR. BARNES: Yes, Your Honor.

12 So, Your Honor, I'm here today on behalf of Lakeland
13 Seniors regarding its motion for leave to sue JXN Water.
14 And so what is that lawsuit going to be about, Your Honor?
15 It's about an ongoing problem.

16 There is leaking water and sewage infrastructure near
17 Lakeland Seniors' property that is causing subsurface
18 flooding and significant damages to Lakeland Seniors'
19 property.

20 First, I'll give just a brief overview of the leaking
21 issues, and then I'll address why we are seeking leave to
22 sue JXN Water.

23 So, first, the issue. Lakeland Seniors owns an
24 apartment complex on Lakeland Drive. This is on the west
25 side of the interstate near Fondren. It sits adjacent to

1 some of UMMC's medical offices, and the apartment complex is
2 for senior citizens in particular, Your Honor.

3 A few years ago, Lakeland Seniors initiated work to do
4 some redevelopment to improve its parking lots, and some
5 time during that work, Lakeland Seniors discovered that
6 there was subsurface water and sewage that was migrating
7 from UMMC's property across the property line on to Lakeland
8 Seniors' property, and those leaks are ongoing, and they
9 have caused substantial damage.

10 Lakeland Seniors has hired outside vendors to do
11 testing and analytics and has also performed visual
12 inspections, and it appears that there is a sewer line, a
13 fire hydrant, and a water meter that are contributing to the
14 leaks that are causing these issues.

15 So that's the issue, and now the question is why are we
16 suing JXN Water? Why are we seeking leave to do so? We
17 believe JXN Water is responsible for one or more of those
18 leaks. It is JXN Water's ordinary business to maintain and
19 to operate the water and sewer system. That includes fixing
20 leaking pipes, that includes fixing leaking meters, and that
21 includes fixing leaking fire hydrants.

22 My firm was hired in July of 2023 to represent Lakeland
23 Seniors' interest. The following month, we served on JXN
24 Water a notice under the Mississippi Torts Claim Act. That
25 was in August of 2023. We also sent JXN Water's counsel the

1 results from the testing that we had done. We sent them
2 photographs of the issues and a spreadsheet of the itemized
3 damages. However, to date, the leaks have not been
4 resolved, Your Honor. So that is why Lakeland Seniors has
5 filed leave to sue JXN Water.

6 THE COURT: Do you have any pictures?

7 MR. BARNES: Your Honor, they are submitted into the
8 record. They are attached to the reply brief of our motion.

9 THE COURT: Okay. I'll get them then.

10 MR. BARNES: Yes, Your Honor.

11 THE COURT: I'll look at them. Go ahead.

12 MR. BARNES: Okay. And with those pictures is also a
13 declaration from a representative of Lakeland Seniors.

14 So in addition to JXN Water, Your Honor, we also
15 believe that UMMC and the City of Jackson may also be
16 liable. So the -- as you're aware, the MTCA has a one-year
17 statute of limitations, and once you serve the notice, it
18 toils the statute for 90 days. So when those 90 days were
19 set to expire, we went ahead and filed a lawsuit in Hinds
20 County Circuit Court. That was to preserve our right to be
21 able to have the lawsuit, Your Honor.

22 We have served UMMC and the City of Jackson, but we
23 have intentionally held off on serving JXN Water while this
24 motion has been pending, so they have not officially been
25 made a party to that lawsuit.

1 So I believe that's all the pertinent background for
2 the moment leading up to the motion for leave. Now I'll
3 address the legal arguments and why we believe we're
4 entitled to file the lawsuit, Your Honor.

5 So I think there is three independent reasons why
6 Lakeland Seniors is entitled to file a lawsuit against JXN
7 Water. The first two reasons is we believe that leave is
8 not even required to file a lawsuit against JXN Water. And
9 that's true under both the stipulated order, and it's true
10 under 28 USC, Section 959(a).

11 But even if leave were required, Your Honor, there's a
12 third reason, and leave should be granted because there is a
13 foundation for Lakeland Seniors' claims; that is, the low
14 hurdle that Lakeland Seniors would have to meet if leave is
15 required.

16 So I'll address each independent reason in turn:

17 First, the Court's stipulated interim order does not
18 require leave to sue JXN Water. The interim stipulated
19 order provides limited immunity to the ITPM and his agents.
20 JXN Water itself is neither the ITPM or one of his agents.

21 Instead, Mr. Henifin is the agent of JXN Water.
22 Mr. Henifin filed the articles of incorporation for JXN
23 Water. He is director and the registered agent of JXN
24 Water. And under Mississippi corporate law, JXN Water has
25 its own individual existence and it can only act and operate

1 through its director or its representatives. Accordingly,
2 we don't believe that the limited immunity set forth in the
3 stipulated order would apply to JXN Water.

4 Second, Your Honor, even if JXN Water has limited
5 immunity under the stipulated order, we believe that the
6 exception that is found in 28 USC, Section 959(a) applies
7 and so we still don't need leave, and that's because JXN
8 Water can be sued for any claims related to it carrying on
9 its business, and that's what the statute -- the statutory
10 exception provides. And, Your Honor, the interim stipulated
11 order recognizes the statutory exception, and that's set
12 forth in paragraph 9(b) of the order.

13 So JXN Water's corporate purpose is the operation and
14 maintenance of the water and sewer system that includes
15 fixing pipes, fixing meters, and fixing hydrants. That's
16 its ordinary business. So Lakeland Seniors' lawsuit will be
17 about the water and sewer system's operational failure and
18 JXN Water acts or omissions related to those systems. This
19 is not a lawsuit about the receivership itself or
20 mispending of money or improper contracts; this is about a
21 property injury that is personal to Lakeland Seniors, Your
22 Honor.

23 And third, even if leave is required from this Court,
24 the Court should grant leave because Lakeland Seniors has
25 met the very low burden that it needs to meet. And, Your

1 Honor, the Fifth Circuit has said that leave should be
2 granted unless it is clear that a claim is without
3 foundation, and the Fifth Circuit has explained that leave
4 to sue is practically never refused.

5 So the question before this Court is whether there is
6 any foundation at all for Lakeland Seniors' claim, and the
7 answer is clearly yes, there is a foundation for our claim
8 because there is leaking water and leaking sewage that is
9 affecting and damaging our property. And it is JXN Water
10 who operates and maintain those water and sewer systems.

11 In conclusion, Your Honor, the Court should find that
12 leave is not necessary because JXN Water is -- is not the
13 agent of the ITPM or because the statutory exception
14 applies, but if leave is required, it should be granted
15 because Lakeland Seniors' claim is not without foundation.

16 Your Honor, that's all I have unless you have any
17 questions at this time.

18 THE COURT: Okay. I'll come back to you after I hear
19 the other side. Okay.

20 MR. MCGUFFEY: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MR. MCGUFFEY: Mitch McGuffey on behalf of the ITPM.

23 So I'm going to address the sort of background -- the
24 background Mr. Barnes provided as I go through the legal
25 arguments, as opposed to separately.

1 So starting with the first issue that he identified,
2 this question of whether or not leave of the Court is even
3 required and in particular whether or not leave is required
4 under the stipulated order. Our biggest issue is maybe with
5 this argument, and it's because the issue -- potentially the
6 broadest impact on the actual operations of the receivership
7 or the ITPM. In fact, for the Court -- just so the Court
8 knows and I'm sure is already aware, this issue has already
9 come up again in another motion for leave that has been
10 filed, in which JXN Water's response is due on Friday.

11 So we are going to be talking about this again until
12 it's sort of resolved. Counsel pointed to the provisions of
13 the stipulated order, so I'll start with that.

14 Paragraph 9(b) of the interim stipulated order in the
15 water case -- and I'll note that the same language is echoed
16 in the sewer order that was entered about 10 or 11 months
17 afterwards -- says: No suit shall be filed against the ITPM
18 or ITPM agents without leave of court. That order was later
19 amended, and the amendment says in paragraph 4 -- amends
20 paragraph 4 of the stipulated order to state: For purposes
21 of implementing this stipulated order, the ITPM may operate
22 through JXN Water, Inc.

23 It is a fairly difficult thing to find if you search
24 through case law to find any court going -- bothering to
25 state that a principal acts through its agent because it's

1 sort of black letter law that everybody understands.

2 The ITPM operates through JXN Water, Inc., and that is
3 always the way it was intended. In fact, I would point the
4 Court back to the joint motion to amend the stipulated order
5 in which the parties that are all sort of sitting behind me,
6 so I'll -- they are the ones that made the motion, Your
7 Honor, not the ITPM.

8 But all of the parties agreed and in the motion stated
9 JXN Water is the entity created by the ITPM solely to
10 implement the ITPM's obligations under the ISO. They went
11 on to say: For legal, financial, and practical reasons,
12 Mr. Henifin performs many ITPM obligations through JXN
13 Water, the whole point of the amendment was to facilitate
14 the ITPM's ability to fulfill his obligations and to work
15 through JXN Water to do so.

16 All of that language was not casual; it was
17 intentional. That is exactly what the parties intended.
18 Practically, I want to address this issue sort of
19 separately.

20 I think the language of the stipulated order sort of
21 speaks for itself. I think it is very clear and unambiguous
22 what the Court intended and what the parties intended, but
23 practically, we want to raise this concern. JXN Water is
24 the contract party for almost all vendors -- I would say all
25 vendors. Mr. Henifin could check me on that, but they are

1 the contract party for all vendors. They are the ones that
2 retain vendors for water and sewer projects. They're the
3 ones that -- that's the entity that holds the bank account
4 that was required under the stipulated order.

5 Under Lakeland Seniors' interpretation, that means that
6 the Court's protection for ITPM agents does not extend to
7 any of those parties because they are working for JXN Water,
8 and so if JXN Water isn't covered by the stip order, neither
9 are their contract parties.

10 We talked earlier today, this morning, about keeping
11 good contractors, and the protection that is provided by the
12 stipulated order for immunities and other protections
13 guaranteed to those contract parties, that is vital to the
14 ITPM's effort to actually get contractors to take our work.

15 So we would absolutely welcome the Court's
16 interpretation on that initial question of whether or not
17 JXN Water, Inc., is covered by the protections and therefore
18 its contract parties are covered by the protections of the
19 stipulated order.

20 Moving forward, the second sort of -- that's a first
21 cut. There is a second cut on whether or not leave is
22 necessary, and counsel pointed to the second half of
23 paragraph 9(b) in which the Court stated that the immunity
24 protections or the leave -- the protection seeking leave was
25 qualified by 28 USC, Section 959(a). I'm going to call it

1 "959(a)" for short if that's all right with the Court. If I
2 say it again, I'll just say that.

3 We think it's pretty obvious that the claims in this
4 case actually have everything to do with the receivership
5 going on. The question of whether or not these claims have
6 to do with the ongoing operation of JXN Water itself or
7 whether they have to do with just suing because they now own
8 the infrastructure, they now have charge of the
9 infrastructure.

10 Counsel said -- and I wrote it down so that I would get
11 it right. Counsel said this is not about the receivership
12 itself. We would say that the timing of this entire -- of
13 everything that we have done bears out that it is in fact
14 about the receivership itself.

15 For one, the claims in this case are about leaks that
16 started on June of 2020 that have caused harm to Lakeland
17 Seniors. That obviously has nothing to do with JXN Water
18 because the ITP wasn't even appointed until November 29th,
19 2022, about 18 months, if I'm doing the math right, later.

20 On top of that, there was no communication from
21 Lakeland Seniors to JXN Water or to the ITPM or anybody that
22 works for JXN Water for months after his appointment. The
23 communication was to the City of Jackson and to UMMC only.
24 That started in -- that started -- I'm actually not even
25 sure when it started because we just weren't involved. We

1 know that they have represented that they had communications
2 with both of those entities in November of 2022, prior to
3 the ITPM being named, and JXN Water wasn't actually
4 incorporated until later in December.

5 So didn't talk to anybody then; didn't talk to anybody
6 on our side until really August of 2023. But the case was
7 filed in June of 2023, and we became aware of it when it was
8 first filed not by Mr. Barnes' firm but by prior counsel for
9 Lakeland Seniors.

10 The fact that they never provided notice is a little
11 tricky when you're making negligence claims because the only
12 other way that you could get here is if they contend that
13 JXN Water knew or should have known about subsurface leaks
14 that are not apparent from actually walking by the property.
15 I don't think they have ever actually contended that, but to
16 the extent that they have, that is really a strict liability
17 standard that they're trying to apply, and there is no basis
18 for a claim on strict liability here.

19 So I don't think there is any real question that JXN
20 Water is being named here not because of any act that it
21 took -- and we'll get to the question of whether it's
22 actually had omissions, but not because of any act that it
23 has taken. It is being named because it was named receiver
24 for the actual water infrastructure.

25 And so there is a case that I would refer the Court to

1 that is in our briefs, but just for the record, it's *OHM*
2 *Systems, Inc. v. Park Place Corporation*, 2020 Westlaw
3 2572203, that kind of sums up, in our view, what exactly is
4 happening here.

5 The quote from that case -- and it's lengthy, and I
6 apologize, but it's good enough for me to read, so I'll do
7 it. It says, "Plaintiff's allegations leave no doubt that
8 it is suing the Receiver only because he is in possession
9 of" -- and I'll editorialize this -- "the City of Jackson's
10 assets and has control over those assets under the authority
11 of this Court's order appointing him as the Receiver for
12 Jackson's water and sewer system. Plaintiff seeks to
13 recover assets that are under the Receiver's control,"
14 namely money, "as a result of damages caused by the City of
15 Jackson's alleged negligence. Plaintiff does not seek to
16 recover damages from the Receiver for alleged acts or
17 omissions of the Receiver himself."

18 There is another quote in here that is pertinent that a
19 number of circuit courts have come to the same conclusion,
20 that merely holding assets does not constitute carrying on
21 business, and that's really what we have here. He is
22 holding the infrastructure -- he has control over the
23 infrastructure under this Court's order and therefore he has
24 been named in the suit.

25 So to the extent the claims are limited to claims for

1 omissions after notice, there's a lot of record evidence
2 that demonstrates the opposite, and so I would point the
3 Court to Mr. Henifin's declaration, which an exhibit to our
4 surreply that is Docket Number 75-2, happy to have him talk
5 about anything he has done, but I'll walk through it.

6 There was an allegation that there was a leak ongoing
7 in 2022. The meter was changed in June of 2023,
8 coincidentally, days after we learned about this lawsuit.
9 That actually wasn't planned; it just happened that way
10 because they are in the constant process of updating all of
11 the meters.

12 Meters changed in June of '23. At some point, another
13 entity, which we believe to be UMMC, repaved the adjacent
14 lot that stands between Lakeland Seniors' property and the
15 meter itself. There is no evidence that there is a leak
16 pushing through that repaved lot. There was a visible
17 inspection October 6th of 2023 with no visible leaks. There
18 was another visible inspection on October 30th of 2023 when
19 some of the surface water, they went back to check to see
20 whether the surface water had dried up and it had. And then
21 in January of '24, JXN Water sent contractors to scope the
22 sewer line.

23 Now, it's important to note that we are talking about
24 the public sewer line that runs along Lakeland; that line is
25 flowing. So there is a question about what more JXN Water

1 needs to do there, but setting that aside, Mr. Barnes made a
2 point of saying that there was a foundation for the claims,
3 that it's a very low burden, it's practically never refused.
4 I think the case law is pretty clear that the word
5 "foundation" in this context doesn't mean the same thing
6 that it does when we're looking at plausibility under *Iqbal*
7 and *Twombly* and things like that.

8 There is a requirement that's applied across this
9 country in receivership cases that has to do with, what does
10 a prima facie case look like in this circumstance? And you
11 have to actually put on evidence of the harm and actually
12 put on evidence of the claim, not just to say, "We have made
13 allegations so they know what the claim's about." That is
14 what we would do if it was a regular complaint.

15 Here you have to actually look at the merits. The
16 merits inquiry's appropriate. The courts have plainly said
17 that this Court is permitted to balance the interests of all
18 parties. It is permitted to consider the impact on the
19 receivership, and that has been done even in the Fifth
20 Circuit.

21 So, again, just for the record, this is in our
22 briefing, but *In re Highland Capital Management*, that's 2023
23 Westlaw 5523949, it's a Northern District of Texas case that
24 applies the same prima facie showing standard that would
25 apply here under *Barton* and under 959(a).

1 We don't really know whether Lakeland Seniors' factual
2 allegations have merit, but the claims against JXN Water
3 don't. They have made three separate claims, that's
4 trespass, private nuisance, and negligence. There is no
5 alleged act, so a trespass is going to be difficult to show,
6 since it's an intentional act claim.

7 Private nuisance can either turn on an intentional act,
8 which, again, there is no act actually alleged, so really
9 that claim turns on negligence; we're back to just a
10 negligence claim. Again, we will reiterate: There is no
11 notice here.

12 And I would point to -- Mr. Barnes noted the
13 declaration. I believe the man's name is Mr. -- well, I
14 won't venture. The person who had put in in their own
15 declaration, he noted damp -- damp mud, and he also noted
16 that there was bacteria in some of the tests that they ran.
17 What he didn't say is there is evidence -- there is treated
18 water flooding that.

19 So if this was coming from actual treated waterlines,
20 that would have been evidenced by the test that they ran,
21 and it's not. The bacteria that he noted, there is nothing
22 that says where it's coming from, and that is part of our
23 issue, is that he's not saying that it's flowing from
24 Lakeland. He's saying it's flowing from somewhere else --
25 Lakeland, the street. He's saying it's flowing from

1 somewhere else, and that's not public infrastructure.

2 The last point I'll make, Your Honor, is that there is
3 another piece to paragraph 9(b) under the stipulated order,
4 which also provides for derivative immunity. Whether or not
5 Lakeland Seniors has cleared the hurdle of putting on a
6 foundational case, they have to also clear the hurdle in the
7 initial instance of proving that derivative immunity would
8 not apply. And that has to be answered separate from the
9 question of whether or not they have made a proper prima
10 facie showing.

11 There is no allegation of willful misconduct or gross
12 negligence. No meaningful allegation of gross negligence in
13 this case. The -- I guess I would just point the Court to
14 page 12 of our response or page 14 of our surreply. I'm not
15 going to beat a dead horse. They just haven't really made
16 any allegation that would rise to the level of willful
17 misconduct or gross negligence, which is what's necessary to
18 prevail over the derivative immunity that applies to an ITPM
19 agent.

20 The last thing I would say is that if the Court is so
21 inclined to permit the claim to move forward, we would
22 appreciate an instruction that the damages that can be
23 recovered, the only thing that can be asked for would be
24 what was -- what would be -- what accrued after notice was
25 provided. Because, again, they have made claims that date

1 back to 2020, and then they have tried to say that from the
2 date the ITPM took over, that's when this triggers his
3 responsibility because this is ongoing operations of JXN
4 Water. That's just not true.

5 And so we're looking at, you know, August of 2023 for a
6 water claim, October of 2023 for a sewer claim because
7 that's actually when the sewer order was entered. So making
8 any claim against the ITPM or against JXN Water for a sewer
9 leak prior to October 2023 doesn't make any sense. They
10 didn't have any control over the infrastructure.

11 I think I'll leave it at that. Our argument in sum --
12 and I do just want to reiterate this -- the stipulated order
13 is clear that Mr. Henifin operates through JXN Water. That,
14 by necessity, makes JXN Water an ITPM agent, however you
15 want to define that.

16 Under 959(a), the claims can only be made for carrying
17 on business. There is no real allegation that there's been
18 an act taken by JXN Water that caused this harm. The best
19 they have done is to say that there was some omission,
20 although I'm not sure what those omissions are supposed to
21 have been since October of 2023 for the sewer system or
22 August of 2023 for the water system, which is the first date
23 of notice.

24 And we would argue that their interpretation of the
25 case law on what sort of prima facie case or foundation is

1 just -- it just doesn't reflect what the case law actually
2 says. And if we dig into that, what you find is they can't
3 actually make trespass claims. They can't actually make
4 private nuisance claims, and they are left with a negligence
5 claim that, at best, survives since last fall.

6 Any questions, Your Honor?

7 THE COURT: Not right now.

8 MR. MCGUFFEY: Brilliant.

9 THE COURT: Rebuttal?

10 MR. BARNES: Your Honor, Jonathan Barnes, again, for
11 Lakeland Seniors. I'll just go through the points in the
12 same order.

13 JXN Water is not an ITPM agent. I do understand that
14 there was an amendment to the interim stipulated order, and
15 it says: Whereas solely to implement the obligations under
16 the ISO, Mr. Henifin incorporated JXN Water, Inc. on
17 December 7, 2022, whereas JXN Water, Inc., is a corporation
18 organized under the laws of the State of Mississippi. And
19 then it goes on to say that the parties have agreed to
20 modify the ISO to clarify that the ITPM may act through JXN
21 Water, Inc.

22 Your Honor, what the amendment does is it gives the
23 ITPM, Mr. Henifin, it gives him further protection. It
24 gives him clarity to know that, yes, you can go out and you
25 can form JXN Water, and you can act through JXN Water. But

1 you still have limited immunity even if you are acting
2 through JXN Water.

3 The order -- the amendment to the order says nothing at
4 all either implicitly or explicitly about giving that
5 limited immunity also to JXN Water. Could the amendment
6 have done so, maybe so, but it didn't, Your Honor.

7 Your Honor, I don't think that that interpretation puts
8 any of the other vendors or contractors that the ITPM is
9 working with in danger of somehow losing their limited
10 immunity. The ITPM, under the order, is required to be the
11 one that signs off on all of these contracts with all of the
12 contractors and vendors. That doesn't put them at danger
13 whatsoever. What we're here talking about and the only
14 thing that I believe it would affect is just JXN Water
15 itself.

16 Your Honor, I'd like to correct one misstatement I
17 believe that JXN Water has said. They said that the -- the
18 leak started in June of 2020. Your Honor, that's not in any
19 of the allegations, not in the notice letter, and it's not
20 in any of the briefing. Jackson -- Lakeland Seniors did not
21 become aware of any of the leaking until late in 2022.

22 As far as past communications or failures in past
23 communications before that time, Your Honor, my firm was not
24 representing Lakeland Seniors at that time. We began
25 representing Lakeland Seniors in July of 2023. The next

1 month, we provided notice of these issues, nothing was done
2 to resolve them, and so that's when we -- we filed this
3 motion for leave.

4 And, Your Honor, this is -- this is not simply about
5 past harm or injuries; this is about an ongoing issue.
6 There is currently leaking water and sewage coming on to our
7 property. So the whole distinction about what timeframe JXN
8 Water may be responsible for and what timeframe they may not
9 be responsible for, that doesn't matter for today's purpose.
10 What matters for today is that there is an ongoing injury
11 and tort that JXN Water has notice of. They have notice of
12 these issues, and they have done nothing.

13 So the timeframe for what they're responsible for
14 doesn't matter; that is for a separate court to address.
15 What matters is, is the sewer system and the water system in
16 their ordinary business and if -- and whether our claim has
17 foundation, and we believe that it does, Your Honor.

18 I'd also like to address the *OHM* case that JXN Water
19 cited to that's in their brief. We distinguished it in our
20 surreply. That case was about a contract that had been
21 breached before the receivership was put into place, and the
22 remedies that the plaintiff was seeking -- was seeking I
23 believe it was the return of software that they believed
24 that they were entitled to, and at that time, the software
25 was in the hands of the receivership.

1 Your Honor, that's completely not the facts of this
2 case. In fact, the *OHM* case was in state court. The
3 receivership was put in place by a state court, Your Honor.
4 So the exception to whether leave is required, that's a
5 federal statute, and the Court found that it didn't apply
6 because the receivership was put in place by a state court.

7 That was the holding in that case. Here, we are in
8 federal court, and the receivership was put in by a federal
9 court, so the federal statute does apply. So *OHM* has no
10 bearing on this case whatsoever, Your Honor.

11 Your Honor, he also mentioned the -- the declaration
12 from Mr. Henifin. Well, we have a fact dispute. You have
13 dueling declarations. You have a declaration from one of
14 our representatives, and you have a declaration from one of
15 their representatives. That's a fact issue that deserves to
16 be presented to a jury. And there are lots of technical
17 issues with how many leaks are out there. There may be
18 more, Your Honor. We don't know. Whose responsibility is
19 it for these leaks? Those are questions that remain to be
20 answered, Your Honor.

21 Some of these questions may take technical analysis.
22 So the question is, if leave is required, have we made a
23 prima facie case? And JXN Water is taking issue with the
24 "without foundation" standard. Well, the Fifth Circuit said
25 that the prima facie case -- in explaining what that

1 standard was, says that it is -- the question is whether the
2 claim is without foundation. So they're one and the same.

3 And, Your Honor, we believe that our claims do have
4 foundation. There is ongoing leaks of water and sewer. JXN
5 Water is operating and maintaining those systems, Your
6 Honor. We believe we're entitled to name them in a lawsuit
7 and to conduct discovery.

8 THE COURT: Are you suing just the water side of this
9 case, or the water and the sewage?

10 MR. BARNES: Your Honor, I believe it would be both.
11 There is subsurface flooding of both water and sewage, so I
12 think both of those components are wrapped up in the same.

13 THE COURT: You are saying you are suffering damages
14 from both?

15 MR. BARNES: Yes, Your Honor.

16 THE COURT: Tell me about your damages that you have
17 pleaded concerning the water matter.

18 MR. BARNES: Yes, Your Honor. So it's about \$3 million
19 worth of damages. When we began repaving our parking lot,
20 the amount of water and sewage that was leaking onto our
21 property caused significant delays in that construction. I
22 believe we had to repair our foundation because of this
23 water damage and various other aspects of our physical
24 property.

25 I'm not sure that I can distinguish the physical

1 damages between just the migration of water or just the
2 migration of sewage. Your Honor, they are both migrating at
3 the same time from multiple sources, and so I don't think we
4 are going to be able to get a test that says this is the
5 treated water that is migrated from that location versus
6 this is the sewage that's migrated from that location.

7 Your Honor, it's all moving subsurface underground and
8 probably mixing together. The answers to those questions, I
9 think, cannot be answered today. But it's a complex issue.

10 THE COURT: So then what are you asserting your
11 complaint?

12 MR. BARNES: That's what we asserted, Your Honor.

13 THE COURT: I mean, but what kinds of injuries did you
14 assert in your complaint?

15 MR. BARNES: We asserted the cost of repairing or
16 repaving the lot. We asserted the cost of the delays in the
17 initial construction, the commercial loss of time. We have
18 also sought injunctive relief, Your Honor. So there are
19 various damages that we have asserted.

20 THE COURT: In your complaint, though, tell me how you
21 describe your injury.

22 MR. BARNES: Your Honor, the complaint is 13 pages
23 long. It has close to 80 factual allegations. I'm happy to
24 submit a copy of the complaint to the Court.

25 THE COURT: Let me have it.

1 MR. BARNES: Your Honor?

2 THE COURT: Let me have it then.

3 MR. BARNES: Sure.

4 THE COURT: Counsel, you can have a seat while I read
5 through this. Okay?

6 (A recess was taken.)

7 THE COURT: All right. Go ahead with your argument.

8 MR. BARNES: Your Honor, that's all I have unless you
9 have any questions.

10 THE COURT: Oh, I don't have any questions then.

11 Thank you. Anything else over here?

12 MR. MCGUFFEY: Your Honor, just two exceedingly quick
13 points. The first one is I had to go back and make sure I
14 wasn't crazy by mentioning June 2020. That actually shows
15 up in their August 2023 notice letter. That's in the
16 record. It's Document 50-1. The exact statement is:
17 Beginning in June 2020, Lakeland entered into a contract for
18 the performance of work.

19 The next sentence is: Throughout work on the project,
20 excess and unexpected water and other aqueous substances
21 were encountered.

22 I guess I do have to plead ignorance about exactly when
23 they started that work. I assumed that date was included
24 for a reason. But I think it would be well before the entry
25 of the stipulated order in November 29th of 2022.

1 The last point I wanted to make was one about the
2 dates, and just to illustrate the point further, the motion
3 for leave was filed in September 11th of 2023. The ITPM
4 wasn't named as a receiver or as a third-party manager over
5 the sewer system for about a month after that.

6 There is no question that the claims made against JXN
7 Water are made because JXN Water now possesses those assets,
8 not because of any act or omission that it took, because the
9 claims were actually made before it even had full
10 possession.

11 That's it. That's all there is from me.

12 THE COURT: Okay. One second. Don't move.

13 Counsel, when you file for removal, on what basis did
14 you remove --

15 MR. MARTIN: Your Honor, we removed on federal question
16 jurisdiction based on the authority of the ITPM and this
17 Court's orders.

18 THE COURT: And what co-provisions did you cite?

19 MR. MARTIN: Your Honor, to be honest, I don't have the
20 notice with me. We cited to -- we did cite to a specific
21 statute, Your Honor, and I don't recall the statute as I sit
22 here. We didn't bring that with us. We can probably find
23 it while we are sitting here, if you would like. I can look
24 it up.

25 THE COURT: You have your removal papers?

1 MR. MARTIN: I don't have the papers, but I think I can
2 get to them or have them sent to me.

3 THE COURT: Oh, well, I'm just asking you what is the
4 federal question?

5 MR. MARTIN: So there's a statute -- I think it was a
6 receivership statute, as -- if I recall correctly, that
7 said -- or that we argued at least that said that when the
8 subject of the lawsuit encompasses a property that's in
9 receivership, the federal court where that receivership is
10 can maintain jurisdiction over the case.

11 I'm playing a little bit loose with my language there,
12 Judge, because it's a statute that I hadn't -- I don't have
13 a lot back familiarity with prior to this filing, and I even
14 internally, I acknowledge it's sort of a novel concept.

15 But the idea behind it I can tell you is simply this:
16 Similar to Mr. McGuffey's arguments on behalf of JXN Water,
17 the city believes that JXN Water is either the agent of the
18 ITPM or stands in the shoes of the ITPM for all purposes in
19 terms of executing and administering the water and sewer
20 stipulated orders.

21 And so the city believes that all protections that are
22 specifically granted in those stipulated orders to the ITPM
23 and any agent thereof, necessarily applied to JXN Water.

24 We also believe that JXN Water -- the city also
25 believes that JXN Water would have been named defendant and

1 served in this but for this Court's orders and those
2 stipulated orders and that this Court, meaning in particular
3 you, Judge Wingate, were the right court to evaluate any of
4 those claims if they touch on the receivership in any way.
5 Judge Johnson, by the way, did not agree and has remanded
6 the case to state court.

7 THE COURT: That's why I was asking, you know, about
8 this particular matter. I don't know what Judge Johnson
9 did.

10 MR. MARTIN: And her order is just in the last week or
11 two, Judge. And, in fact, she even has a short statement in
12 the order that looked like maybe there was -- that we were
13 close to invoking federal jurisdiction properly if I read it
14 correctly at least.

15 But I didn't come prepared to argue any of those
16 removal issues today. I did come for the parts of this
17 hearing this morning and also to add what I just added in
18 terms of this hearing.

19 I mean, Judge, as a practical matter, the city is put
20 in kind of a different sort of situation here on these
21 lawsuits now, and that will change again as time passes.
22 But, for example, let's say -- regardless of what the Court
23 does with JXN Water here today, whether the Court grants
24 leave for the plaintiffs including JXN Water as a defendant
25 or does not, the city will still be defending this lawsuit

1 now in state court, and among other things, other provisions
2 of the stipulated orders will call into question how the
3 city is going to properly defend itself.

4 We can't compel deposition testimony. It is not even
5 clear that we can compel discovery-type responses from JXN
6 Water. I'm sure they'll cooperate, of course, but as a
7 practical matter, Mr. Henifin is trying to run the water
8 system and sewer system, and this Court has already
9 acknowledged in the stipulated orders that we don't want any
10 more interference with that than is necessary.

11 Be that as it may, JXN Water is now in possession,
12 custody, and control of most of the city's information, for
13 example, this lawsuit. We'll need to get that information
14 from JXN Water. Potentially depositions might be required
15 either by the plaintiff or by the city as to JXN Water. Of
16 course, we will come back to you to ask about that when the
17 time comes. But we are hoping to get a little guidance on
18 that today.

19 THE COURT: This complaint does not contain, on its
20 face, any federal removal statutes. Do you agree with that?

21 MR. MARTIN: Your Honor, what we cited -- I still don't
22 have the statute, I apologize. But it gets referred to a
23 lot -- it comes out of the lawsuit *Grable & Sons Metal*
24 *Products*, and the idea was that with the stipulated orders
25 being specifically pursuant to the Safe Drinking Water Act

1 and the Clean Water Act and the federal court -- we are
2 calling it a receivership, even though I don't think that
3 phrase is specific as to the stipulated orders -- but as a
4 practical matter, receivership. That those things combined
5 create what is essentially a federal question.

6 Again, Judge Johnson disagreed, but that was the -- big
7 picture; that was our argument.

8 THE COURT: But then on the other hand, there's a
9 provision here which is -- let me see -- well, I don't think
10 it's cited here in the complaint. But on the other hand,
11 there is a provision in the stipulated order that says that
12 this Court is to give permission; is that correct?

13 MR. MARTIN: Yes, sir. At least for leave as to naming
14 and serving and filing suit against JXN Water, yes, sir.

15 THE COURT: Okay.

16 MR. MARTIN: And any agent thereof, I suppose.

17 THE COURT: And Lakeland Seniors, Inc., is proposing to
18 sue JXN Water among other defendants.

19 MR. MARTIN: Yes, sir.

20 THE COURT: And based on that, then, that's -- now I
21 didn't see that ground specifically raised in here, though.
22 Was it specifically raised in here?

23 MR. MARTIN: In the motion to remand?

24 THE COURT: Not motion to remand, in the motion to
25 remove.

1 MR. MARTIN: I'm sorry, in the notice of removal. I
2 hope we had something in there about it, Judge, but as I
3 stand here right now, I can't say one way or the other with
4 certainty whether the city referred to that provision or
5 not. I know we cited to some of the provisions of the
6 stipulated orders, but I don't recall which ones.

7 I would have wanted to say, Judge, and I should have if
8 I didn't, that the Court having to give leave to file the
9 suit should apply to the suit as a whole.

10 THE COURT: Well --

11 MR. MARTIN: JXN Water had not yet been served, so my
12 hands were tied a little bit on that as well. We were
13 moving with just the city and UMC as served defendants at
14 the time.

15 THE COURT: Let's look at page 2 of the complaint.

16 MR. MARTIN: Of the complaint?

17 THE COURT: Yes. It says: The Court has subject
18 matter jurisdiction over this proceeding pursuant to Section
19 9-7-81 of Mississippi Code.

20 MR. MARTIN: Yes, sir.

21 THE COURT: Was that the code section you are looking
22 for?

23 MR. MARTIN: Not for the state code, Your Honor, no,
24 sir. We haven't filed an answer yet in the case. Well,
25 actually, I think we just filed an answer. We just filed an

1 answer, but at the time of our removal, we had not -- the
2 city had not answered, but the city would not have been
3 citing to the Mississippi subject matter jurisdiction
4 statute in the notice of removal, we would have been arguing
5 under a well-pleaded complaint federal questions were
6 implicated here that were sufficient to justify and invoke
7 federal jurisdiction.

8 THE COURT: Okay. Then on page 3 you start off with
9 the factual background that says: Statement of relevant
10 facts.

11 Page 6 -- I mean 4, there's a continuation on the
12 relevant facts as well as on page 5, and then at the second
13 half of page 5, it actually goes into the basis of the
14 claim.

15 MR. MARTIN: Yes, sir. It's all in the complaint.

16 (Crosstalk)

17 THE COURT: -- limine and control, et cetera, and you
18 should have known -- and defendants' water and sewage and
19 other waste continues to migrate into the subsurface
20 environment.

21 32 and 33 on migration, that they present -- that that
22 circumstance presents an imminent and substantial threat.
23 And page 34: Upon information of a leave, defendants
24 regularly permitted the release and migration of water and
25 of sewage and other waste from defendants' facility and

1 systems to surround neighboring properties.

2 And then there's some counts. Count 1 is on trespass.
3 Page 8 is talking about migration again.

4 Page 8 second half is private nuisance. Page 9,
5 defendants have failed to take reasonable steps and timely
6 measures to abate the migration. Public 9 (sic) is on
7 public nuisance.

8 Top of page 10 is continuing negligence and then down
9 on the same page, paragraph 63 through 67, alleges
10 negligence as a duty of reasonable care. Defendant has
11 further failed to evaluate the information available to them
12 to apprise themselves of the faulty systems.

13 67, defendants are suffering -- I mean, plaintiffs are
14 suffering and will continue to suffer unless there is some
15 change. An element of damages is that Lakeland Seniors also
16 suffer damages including, but not limited, to increased
17 construction costs, cost of significant delays, and expense
18 when Lakeland Seniors had to postpone construction of the
19 project and incur additional expenses and attempt to migrate
20 the damages caused by the defendants.

21 Gross negligence is -- is mentioned in paragraph 61
22 through 81. And in the prayer for relief, I see request for
23 preliminary and permanent injunction directing defendants to
24 respond, to remove and remedy the contamination.

25 Paragraph -- then in paragraph 78(e), we are back to

1 damages. And punitive damages, attorneys fees,
2 prejudgment/postjudgment interest. Any other relief that
3 the law requires.

4 Now, did I just go over too fast or I read past where
5 there was any assertion for jurisdiction based upon my
6 order?

7 MR. MARTIN: In the complaint, there is no such
8 allegation, Your Honor. In our notice of removal, which I
9 do have on my colleague's phone right now actually, not on
10 my phone, what the city said was, the city acknowledged that
11 the complaint asserted only state law causes of action.
12 What we said was that federal question jurisdiction would
13 still lie over those state law claims because of the
14 significant federal issues which are implicated and we cited
15 to the *Grable* doctrine in that, which has not been applied
16 very many times, but has been applied in a receivership
17 setting.

18 And so the idea here is that, sure, the factual basis
19 underneath all of this is the idea that somehow water was
20 migrating to -- from UMC's property to Lakeland Seniors, but
21 that everything about this implicates JXN Water -- well, not
22 the facts, and I don't mean that in a conclusory fashion.
23 But in terms of the way the complaint has been laid out, it
24 speaks to specifically JXN Water's role, that Jackson and/or
25 JXN Water own and are responsible for the maintenance and

1 repair of these meters and hydrants as well as sewer lines.
2 All of the allegations of fault in the complaint are
3 intertwined into this sort of defendants did this,
4 defendants did that. So it's very difficult, if not
5 impossible, to tease out what the plaintiffs claim the city
6 actually did or, for that matter, what JXN Water did.

7 And here is where it specifically said: Although no
8 allegation of the complaint expressly invokes federal
9 jurisdiction, the allegations directly implicate federal
10 jurisdiction pursuant to the stipulated orders entered in
11 this Court and at least two cases. And we cited to the
12 Clean Water Act case and the we cited to the Safe Drinking
13 Water Act case and also did cite, Your Honor --

14 THE COURT: What page is that?

15 MR. MARTIN: In the notice of removal, it's on page 4.

16 THE COURT: Oh, it's on the notice of removal. I don't
17 have that up here.

18 MR. MARTIN: Yes, sir. Yes, sir. I'm sorry. It's on
19 page 3 and 4 in the notice of removal.

20 THE COURT: Okay.

21 MR. MARTIN: And we cited that the *Grable* case goes
22 into a little more detail when a federal court sitting in a
23 receivership situation might take a federal question --
24 might take federal question jurisdiction as having been
25 invoked even though the actual torts that are alleged are

1 all state law torts. So this has happened. It hasn't
2 happened very often. But based on, as Your Honor noted
3 earlier, this Court requiring leave of court to be granted
4 before a suit could be filed against JXN Water, given that
5 the suit had already been filed naming JXN Water and serving
6 the city and UMC, and given the number of federal
7 questions -- and I put that in lower case now -- but we're
8 going to be coming back to this Court repeatedly if this
9 litigation moves forward in state court.

10 We will have to come back over -- I can't imagine how
11 many discovery questions we're going to have to come back to
12 the Court and say, well, Judge, the plaintiffs have asked
13 for this, JXN Water has that information, we can't force JXN
14 Water to turn that over. And, in fact, the orders say that
15 JXN Water doesn't have to participate in a variety of ways.

16 So we will have no choice but to come to this Court for
17 answers to those questions as we go along. And, frankly,
18 Judge, in terms of the city's position, we are going to face
19 this on numerous cases, and they are only going to grow --
20 hopefully they'll be less in terms of the number of
21 customers who claim there's been a problem, but there will
22 be more in the sense that as we get to the date that the
23 stipulated order is appointed the third-party administrator,
24 these claims will be slightly different because now they are
25 going to name JXN Water and now there is going to be

1 identification issues from the city on that as well. So we
2 are hoping to get to some clarification on all the issues
3 that are related to this as we go along.

4 But the specific question the Court asked was: What
5 was the basis of our removal? It was the stipulated orders,
6 it was Clean Water Drinking Act, Safe Water Drinking Act,
7 and specifically the provisions in this Court's orders with
8 immunity leave -- leave to file suit and so forth. It will
9 have to be resolved by this Court if litigation goes
10 forward.

11 THE COURT: All right. Thank you very much.

12 MR. MARTIN: Yes, sir.

13 THE COURT: Thank you very much. Do you have something
14 you want to add to that?

15 MR. MCGUFFEY: No, Your Honor.

16 MR. MARTIN: Can I add one more thing, I'm sorry. This
17 was much simpler.

18 Mr. McGuffey pointed this out earlier with the notice
19 of claim, but since Your Honor just read the whole
20 complaint, the original complaint says the exact same thing
21 in it. Paragraph 13 of the complaint says, beginning in
22 June of 2020, Lakeland Seniors entered into contracts for
23 the performance of work to improve its property. And the
24 next paragraph says: Throughout the work on the project,
25 excess and unexpected water, blah, blah, blah.

1 So I think they artfully omitted saying some of the
2 dates that probably exist, but they did say in the complaint
3 that these issues -- that the contracts and the work started
4 in June of 2020 and that the problems they experienced --

5 THE COURT: Slow down some.

6 MR. MARTIN: I'm sorry.

7 And that the problems they experienced occurred
8 throughout the life of those projects, which, again, began
9 in June of 2020. That's paragraphs 13 and 14 on page 3 of
10 the Document 2 of the complaint.

11 That was all, Your Honor. I wanted to mention that
12 while it's still out there.

13 THE COURT: Okay.

14 MR. MARTIN: Thank you, Judge.

15 THE COURT: Something you want to add?

16 MR. MCGUFFEY: Nothing to add, Your Honor. If you have
17 any questions for me, I'm happy to take them; otherwise,
18 I'll take a seat.

19 THE COURT: All right. Thank you. Let's go back to
20 plaintiff.

21 Now, it's not in your complaint, but in their removal
22 papers, they just read some materials to me that refers to
23 this court's -- what this court said supposedly about the
24 removals papers. I haven't gotten a chance to see the
25 removal papers.

1 But do you recall the court's -- any statements by the
2 court that -- that had to be permission from this Court for
3 there to be a lawsuit against JXN Water?

4 MR. BARNES: Your Honor, I don't believe that Judge
5 Johnson addressed that specific issue or took a position on
6 that specific issue in her remand order. The notice of
7 removal, the basis for removal was federal question
8 jurisdiction under the Supreme Court case of *Grable*. *Grable*
9 just says that even if a complaint only lists the names
10 state court claims or state claims, that there might be
11 federal question jurisdiction if those claims raise a
12 significant federal issue that is significant to the federal
13 system as a whole.

14 So as I recall it, Judge Johnson's order I believe said
15 that whatever issue this was, wasn't a federal issue on the
16 face of the complaint, and that even if it was an issue, it
17 was not significant to the federal system as a whole. It's
18 narrow and tailored to this local issue of the City of
19 Jackson and the water system and sewer system here.

20 That's my understanding. I do believe that Judge
21 Johnson was aware of the consent orders. They may have been
22 attached to some of the notice of removal or some of the
23 pleadings. I do believe that Lakeland Seniors' motion for
24 leave in the briefing that has been submitted before this
25 Court, I believe that was attached to Judge Johnson's docket

1 as well. So I think she had full access and -- to
2 everything that we have been talking about here today. I do
3 not think she took a specific position on whether we must
4 seek leave or not.

5 THE COURT: Okay. Thank you.

6 MR. BARNES: And the last thing I'll mention, Your
7 Honor, there has been a little bit of back and forth about
8 the dates. I have with me the notice letter that was sent
9 out to JXN Water. In the fourth body paragraph, I believe
10 JXN Water read this into the record, it says: Beginning in
11 June of 2020, Lakeland entered into contracts for
12 performance of work to improve its property, including a
13 contract for foundational work (the project). It goes on to
14 say that throughout the work of the project, we experienced
15 the migration of the water.

16 So there's no date on when that specific work began in
17 relation to all of the different contracts and works that
18 were being done over a period of time, Your Honor. And if
19 you'll -- on the last page of the letter, which is in the
20 record, Your Honor, at Docket 50-1, the very last paragraph
21 says: On or about November 2022, Lakeland discovered that
22 water and other aqueous substances was migrating from UMC's
23 property.

24 So that is the date of when we discovered the
25 subsurface flooding. There is no other date, and the

1 June 2020 date refers only to when we started entering into
2 various contracts.

3 That's all, Your Honor.

4 THE COURT: Okay. Thank you very much.

5 I'm going to write a very short opinion on this, so it
6 will probably be some time next week before I finish it up,
7 though. It will be a short opinion.

8 All right. Thank you all very much.

9 The next matter, I have one more argument this
10 afternoon.

11 MR. MARTIN: Judge, if I can mention real quick. I
12 have to leave at about 3:45, and I'm not needed for this
13 next part. So I didn't want think I was being rude if I
14 sneak out in a few minutes, if we are not done.

15 THE COURT: Oh, it's okay with me. But these parties
16 might be upset you're not interested in hearing them make
17 their argument.

18 MR. MARTIN: I'm very interested. And that's why I
19 have capable co-counsel right here to listen and report.

20 THE COURT: All right. Thank you. You can be excused
21 if you want to.

22 Okay. Now, then, your motion.

23 MR. TOM: Yes, good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MR. TOM: One of my colleagues who is actually on the

1 screen is going to argue this motion. It's Mikaila
2 Hernandez.

3 THE COURT: Okay. Who is going to argue the motion?

4 MR. TOM: Mikaila Hernandez. She's top left.

5 THE COURT: Okay. Top -- there she is. All right.

6 MS. HERNANDEZ: Hi, Your Honor.

7 THE COURT: Ms. Hernandez, are you ready?

8 MS. HERNANDEZ: Yes, sir.

9 THE COURT: Okay. Then hang on just one second. Okay.
10 Just one second.

11 Ms. Hernandez, I'm ready.

12 MS. HERNANDEZ: Thank you, Your Honor.

13 I represent the proposed intervenor plaintiff, the
14 People Advocacy Institute, and Mississippi Poor People's
15 Campaign, along with co-counsel Emily Early, Jess Vosburgh,
16 and Joshua Tom, who is there in your chambers today.

17 I do want to start with a couple of brief intro.
18 Really, we want to ask the Court to rule on our motion for
19 leave to intervene in this case given how long it has been
20 pending, which is about six months now. The motion is not
21 opposed, and we are given the unconditional right to
22 intervene under Rule 24(a)(1) and under certain provisions
23 of the Safe Drinking Water Act.

24 I do want to note that this conference wasn't noticed
25 as a hearing on the motion, but we do want to brief the

1 Court on four preliminary points, if that's okay.

2 THE COURT: You say your motion is not opposed?

3 MS. HERNANDEZ: Correct.

4 THE COURT: Let me turn to the other side.

5 Is this motion opposed?

6 MR. MCGUFFEY: No, Your Honor.

7 THE COURT: So now it's not opposed by anyone.

8 MR. MCGUFFEY: Your Honor, I can't speak for the other
9 parties, but not from the ITPM's perspective.

10 MR. FINGERHOOD: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MR. FINGERHOOD: Karl Fingerhood, U.S. Department of
13 Justice, Environmental Enforcement section.

14 That is correct. The intervenors seek to intervene on
15 three claims. One is related to turbidity limits -- three
16 claims in the Safe Drinking Water Act action. The second is
17 related to corrosion control, and the third is related to
18 filter rehabilitation at J.H. Fewell.

19 We do consent to intervention to those three claims
20 against the city; however, we do not consent to intervention
21 as to any other claims or allegations set forth in the
22 moving papers.

23 Finally, as the Court is aware, the case has been
24 stayed and we are seeking a further stay, so if the
25 relief --

1 THE COURT: Now, I have signed the proposed order
2 seeking a stay from henceforth out, or at least one year or
3 so ago. But whatever the paper set out, I signed it this
4 morning or last night. I think I signed it this morning.

5 MR. FINGERHOOD: Well, as the case is stayed, we would
6 then also ask that to the extent intervention is allowed on
7 those three claims, that there not be any discovery or other
8 type of action be taken on the intervenors they have related
9 to those three claims.

10 And, finally, the proposed intervenors have been
11 included in the ongoing status conferences, and that's fine,
12 but we also want to note that the United States retains
13 ultimate discretion to negotiate its claims against the city
14 as they see fit. And, of course, ultimately those will have
15 to be approved by Your Honor, but we want to make -- just
16 make clear that we still retain that discretion, that given
17 -- should intervention be allowed on those three claims.

18 THE COURT: Okay. So to go back over your statements,
19 there are six claims; is that correct?

20 MR. FINGERHOOD: In the complaint, I think --

21 THE COURT: I think you said --

22 MR. FINGERHOOD: Since I looked at it. But they only
23 seek to intervene as to three claims, and we do not oppose
24 them intervening as to those three claims. But their
25 intervention papers raise a lot of issues that are, we

1 believe, not related to those three claims, and so to the
2 extent they seek to litigate those or take discovery as to
3 those other matters against the city or against the state or
4 any other parties, the United States, we would oppose going
5 beyond --

6 THE COURT: Those three claims?

7 MR. FINGERHOOD: Right.

8 THE COURT: Okay. What says the city?

9 MR. WILLIAMSON: Your Honor, the city does not oppose
10 the --

11 THE COURT: Pardon me?

12 MR. WILLIAMSON: I said -- Your Honor, this is Terry
13 Williamson for the City of Jackson. The city does not
14 oppose the motion to intervene.

15 THE COURT: Okay. Then is there anybody here who
16 opposes?

17 I see no hands. Going, going. Okay. Nobody opposes.

18 Well, let me ask then: You said that you do not oppose
19 the first three claims, but you would oppose if there is any
20 effort to go beyond those three claims; is that correct?

21 MR. FINGERHOOD: That's correct, Your Honor.

22 THE COURT: Okay. Well, let me ask the opposed
23 intervenor: Is there any intent to go beyond those three?

24 MS. HERNANDEZ: I think at this point that's a bit
25 speculative, Your Honor, but at this point, we are only

1 wanting to intervene on those three claims.

2 THE COURT: That's all you want to intervene on?

3 MS. HERNANDEZ: In our proposed complaint, yes, sir, at
4 this time.

5 THE COURT: Okay. Well, doesn't seem like anybody is
6 disagreeing with you, so I'm going to allow you to intervene
7 then on those three claims. But now, you can't go beyond
8 those three.

9 Is that your understanding, Ms. Hernandez?

10 MS. HERNANDEZ: My understanding is that if we are
11 provided party status and we would reserve the right to
12 amend a complaint in the future if we see fit, but at this
13 point, we do only want to intervene on those three claims.

14 THE COURT: Then at this point, I'll allow you to
15 intervene on those three claims, and if there is some intent
16 to seek to expand that intervention, then I will have to
17 take that up.

18 Do you understand that?

19 MS. HERNANDEZ: I understand, Your Honor. Thank you.

20 THE COURT: Okay. Well, that didn't take long.

21 Anybody else have something else that's short? We can
22 work.

23 All right. Well, Nav, look at the list.

24 Okay then. Well, that takes care all of the businesses
25 that I put down to take care of today.

1 Now, is there anyone who disagrees and there is
2 something else that needs to be taken up? Anybody?

3 Mr. Henifin, at some point you mentioned that you had
4 made a request for some documents from the city.

5 MR. HENIFIN: Yes, sir.

6 THE COURT: And that request now has some whiskers on
7 it and that you made that request some time ago.

8 MR. HENIFIN: Yes, Your Honor.

9 THE COURT: Have you received those documents yet?

10 MR. HENIFIN: Not yet, Your Honor.

11 THE COURT: What are those documents?

12 MR. HENIFIN: We need proof of payment invoices and
13 payment for grant -- I mean, for bond-funded projects.

14 THE COURT: That's right.

15 MR. HENIFIN: In particular, we're looking at the
16 Siemen's metering contract. If we can show EPA that's --
17 what is specifically a drinking water eligible project, we
18 can use some of the state revolving loan fund dollars to pay
19 down that debt.

20 Currently, that debt is crushing us from a local cash
21 flow perspective at 1.6 million a month. If we can get the
22 Siemen's information that EPA is seeking to show that that
23 was a water-related project and we didn't do any sewer
24 projects with that, we should be able to reduce that monthly
25 cost by about \$800,000.

1 THE COURT: Let me turn to the city.

2 Are you aware of any such request?

3 MR. WILLIAMSON: Yes, Your Honor. It was our
4 understanding that Mr. Henifin was seeking a text amendment
5 to the authorization for those SRF funds. And that would
6 have allowed him to, you know, use those SRF funds for water
7 and sewer debt.

8 And so we were hopeful that he would be able to obtain
9 that text amendment so that he could, you know, retire all
10 of the city's water and sewer debt. We have recently
11 learned from Mr. Henifin that that seemed to probably be
12 unlikely or he was -- it was going to take longer than he
13 had anticipated.

14 And so we are trying to locate those documents if --
15 Your Honor, those documents are from, you know, at this
16 point, eight or nine years ago. But our finance department
17 is looking through those documents, you know, looking
18 through documents to see if they can locate them. If they
19 are unable to locate them, we are also -- you know, we had
20 outside counsel involved in the lawsuit against Siemen to
21 recover the city's money that was paid under that contract.

22 I would hope that they would still have copies of those
23 documents if the city does not. But I'm -- it's just taking
24 awhile, Your Honor, because in the middle -- well, after all
25 of this, the city has converted to a different financial

1 management system so it's very cumbersome to go back and
2 look at things that were done under the old system, but we
3 are working to do that.

4 THE COURT: How long will it take you to verify whether
5 you can obtain those documents?

6 MR. WILLIAMSON: I would have to check again with the
7 finance department to get a specific date for that. I don't
8 know right now. That's not something that I'm capable of,
9 you know, doing myself. That's something I'm depending upon
10 our finance department to do.

11 THE COURT: Would a week be reasonable for me to expect
12 some sort of response?

13 MR. WILLIAMSON: Yes. We could provide a response to
14 whether we have located documents or, you know, what
15 additional time might be required to locate documents. So
16 we can do that in a week, yes, Your Honor.

17 THE COURT: Okay then. Report back to me by next --
18 oh, let's see -- I guess next Tuesday by 5:00. Is that all
19 right?

20 MR. WILLIAMSON: Yes, Your Honor.

21 THE COURT: Okay then. I'll expect your report by
22 then.

23 Mr. Henifin, we'll see what we have, all right?

24 MR. HENIFIN: Thank you, Your Honor.

25 THE COURT: All right. Thank you so much.

1 Is there anything else from anyone?

2 MS. HERNANDEZ: Your Honor, I do have a question.

3 THE COURT: Yes?

4 MS. HERNANDEZ: Will you be issuing a written order
5 granting intervention?

6 THE COURT: Pardon me?

7 MR. HENIFIN: Will you be issuing a written order
8 granting the intervention, the motion to intervene?

9 THE COURT: You want to send me a proposed order?

10 MS. HERNANDEZ: Yes. I believe we did, but we can
11 resend.

12 THE COURT: Okay then. Then just send me a proposed
13 order. How long would it take you to get it, to prepare it?

14 MS. HERNANDEZ: Today.

15 THE COURT: Pardon?

16 MS. HERNANDEZ: Today.

17 THE COURT: Okay. Let's make it tomorrow by noon,
18 okay?

19 MS. HERNANDEZ: Yes, sir.

20 THE COURT: Because it's already 3:42.

21 You have another question?

22 MS. HERNANDEZ: No, that's all. Thank you, Your Honor.

23 THE COURT: Okay.

24 Yes?

25 MR. FINGERHOOD: Your Honor, one brief clarification.

1 I think Mr. Henifin said that it was EPA that would make the
2 determination. I'm not sure that's necessarily the case. I
3 think it may be the state that would make the call about the
4 SRF, you know, what would be eligible.

5 But, anyway, I think we are all working (crosstalk) --
6 right. We are all doing it cooperatively. There is a
7 dialogue ongoing between the state EPA and Mr. Henifin and
8 the city has been looking for those documents.

9 THE COURT: Okay. With that correction, we are
10 still -- okay. Anybody else on anything?

11 All right. Thank you all very much. I'm closing out.
12 Have a good day.

13 (Court adjourned at 3:44 p.m.)

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COURT REPORTER'S CERTIFICATE

I, Caroline Morgan, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically reported by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 18th day of July, 2024.

/s/ Caroline Morgan, CCR

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